

D-R-A-F-T

S.I. [] of 2007

REGULATIONS

Entitled

European Communities (Markets in Financial Instruments) Regulations 2005

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), and for the purpose of giving effect to Directive 2004/39/EC, dated 21 April 2004, of the European Parliament and of the Council, hereby make the following regulations:

TITLE I

PRELIMINARY AND GENERAL PROVISIONS

Citation and commencement

1. (1) These Regulations may be cited as the European Committees (Markets in Financial Instruments) Regulations 2005.

(2) These Regulations come into operation on 1 November 2007¹.

TITLE II – DEFINITIONS AND SCOPE

Object and Scope of these Regulations

2. (1) The object and scope of these Regulations is to give effect to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments.

(2) The following provisions shall also apply to credit institutions authorised under Directive 2000/12/EC, when providing one or more investment services:
 - (a) Regulations 4(2), 14, 16 and 17.
 - (b) Title VII (excluding Regulation 40(2)(ii)),
 - (c) Title VIII,

¹ To be signed by 31 January 2007.

(d) Title IX (excluding Regulations 48(2) to (4), 50(2) to (4), and 50(6) to (7));

(e) Regulation 6, Title XII and Title XIII; and

(f) Regulations 57, 61 and 62.

Interpretation

3 – (1) In these Regulations, except where the context otherwise requires –

“ancillary services” means

- (a) safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management;
- (b) granting credits or loans to an investor to allow him to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction;
- (c) advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings;
- (d) foreign exchange services where these are connected to the provision of investment services;
- (e) investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments;
- (f) services relating to underwriting;
- (g) investment services and ancillary services related to the underlying reference of the instruments listed at (e), (f), (g) and (j) of the definition of “financial instruments” below where:
 - (i) these are connected to the provision of investment or ancillary services; and
 - (ii) the underlying reference is not itself a ‘financial instrument’

(h) other ancillary services which the Bank, with the consent of the Minister, may prescribe by Regulations;

“approved professional body” has the meaning assigned to it by section 55 of the Investment Intermediaries Act 1995;

“authorised investment firm” means an investment firm which has been authorised by the Bank under Regulation 8 or which is deemed to be authorised pursuant to Regulation 5;

“authorised officer” means a person authorised under Regulation 75;

“the Bank” means the Central Bank and Financial Services Authority 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 and which may also perform ancillary services for which the investment firm has been authorised; all the places of business set up in the State by an investment firm with headquarters in another Member State shall be regarded as a single branch;

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

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

(a) participation, which means the ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking, or

(b) control, which means the relationship between a parent undertaking and a subsidiary, in all the cases referred to in Article 1(1) and (2) of Directive 83/349/EEC or a similar relationship between any natural or legal person and an undertaking, any subsidiary undertaking of a subsidiary undertaking also being considered a subsidiary of the parent undertaking which is at the head of those undertakings.

A situation in which two or more natural or legal persons are permanently linked to one and the same person by a control relationship shall also be regarded as constituting a close link between such persons;

“competent authority”-

- (a) in relation to the State, means the Bank, and
- (b) in relation to every other Member State, means the authority of that State that is empowered by a law of that State to supervise credit institutions, insurance undertakings or investment firms (whether on an individual or a group-wide basis), or two or more of those kind of entities;

"control", in relation to an undertaking, means control of the undertaking by a parent undertaking or by a person (whether natural or legal) in the cases referred to in Article 1(1) and (2) of Directive 83/349/EEC;

“Court” means the High Court;

"credit institution" means the holder of an authorisation issued by the Bank or by a competent authority of another Member State for the purposes of Directive 2000/12/EC relating to the taking up and pursuit of the business of credit institutions²;

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

"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;

“the Directive” means the Markets in Financial Instruments Directive 2004/39/EC of 21 April 2004;

“financial instruments” means

- (a) transferable securities³;
- (b) money – market instruments;

² Needs to refer to authorised credit institutions.

³ Expansion from IIA.

- (c) units or shares in undertakings for collective investments in transferable securities within the meaning of [European Communities (Undertakings for Collective Investments in Transferable Securities) Regulations, 1989 (S.I. No. 78 of 1989)]⁴, and any subsequent amendments thereto, units in a unit trust, shares in an investment company, capital contributions to an investment limited partnership⁵;
- (d) options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivative instruments, financial indices or financial measures which may be settled physically or in cash;
- (e) options, futures, swaps, forward rate agreements 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 (otherwise than by reason of a default of other termination event);
- (f) 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 and/or an MTF;
- (g) options, futures, swaps and any other derivative contract relating to commodities that can be physically settled not otherwise mentioned at (f) above and not being for commercial purposes, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are cleared and settled through clearing houses or are subject to regular margin calls;
- (h) derivative instruments for the transfer of credit risk;
- (i) financial contracts for differences;
- (j) options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances 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 (otherwise than by reason of a default or other termination event) as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not

⁴ Update to 2003 Regulations?

⁵ Expansion from IIA.

otherwise mentioned in the definition of ‘financial instruments’ which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market or an MTF, are cleared and settled through recognised clearing houses or are subject to regular margin calls.

- (k) other financial instruments which the Bank, with the consent of the Minister, may prescribe by Regulations;

"home Member State" means:

- (a) in the case of investment firms:

- (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;

"host Member State" means the Member State, other than the home Member State, in which an investment firm has a branch or performs services and/or activities, 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;

"insurance undertaking" has the same meaning as in the Insurance Act 1989;

"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" investment firm" means any person, other than a tied agent, whose regular occupation or business is the provision of one or more investment

services to third parties on a professional basis and/or the activity of dealing on own account on a professional basis; and for this purpose where an individual provides an investment or ancillary service and/or carries on the activity of dealing on own account and where that service or activity is carried on solely for the account of and under the full and unconditional responsibility of an investment firm or an insurance undertaking or a credit institution that activity shall be regarded as the activity of the investment firm, insurance undertaking or credit institution itself;

This definition includes natural persons provided that:

- (a) their legal status ensures a level of protection for third parties' interests equivalent to that afforded by legal persons, and
- (b) they are subject to equivalent prudential supervision appropriate to their legal form.

However, where a natural person provides services involving the holding of third parties' funds or transferable securities, he may be considered as an investment firm for the purposes of these Regulations only if, without prejudice to the other requirements imposed in these Regulations and in Directive 93/6/EEC, he complies with the following conditions:

- (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 Irish law, to audit accounts;
- (d) where the investment firm has only one proprietor, he must make provision for the protection of investors in the event of the investment firm's cessation of business following his death, his incapacity or any other such event;

"investment services" means

- (a) the reception and transmission of orders in relation to one or more financial instruments,
- (b) execution of orders on behalf of clients,

- (c) dealing on own account, meaning the activity of trading against proprietary capital resulting in the conclusion of transactions in one or more financial instruments,
- (d) portfolio management;
- (e) investment advice,
- (f) underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis,
- (g) placing of financial instruments without a firm commitment basis,
- (h) operation of Multilateral Trading Facilities,
- (i) other investment services which the Bank, with the consent of the Minister, may prescribe by Regulations;

and a reference to the provision of investment services in these Regulations shall be interpreted as including a reference to the carrying on of the activity of dealing on own account;

“ISD firm” means an investment firm within the meaning of Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field;

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

"market maker" means a person who holds himself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling financial instruments against his proprietary capital at prices defined by him;

“the Minister” means the 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 but excluding instruments of payment;

"market operator" means a person or persons who manages and/or operates the business of a regulated market. The market operator may be the regulated market itself;

“Member State” means a Member State of the European Community;

"multilateral trading facility (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;

“parent undertaking” means an undertaking as defined by Articles 1 and 2 of Seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts;

“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 laid down in Schedule One to these Regulations;

“qualifying holding” means a direct or indirect holding of shares or other interest in a proposed investment firm or an authorised investment firm which represents 10 per cent. or more of the capital or of the voting rights, or any direct or indirect holding of less than 10 per cent. which, in the opinion of the Bank, makes it possible to control or exercise a significant influence over the management of the proposed investment firm or authorised investment firm in which a holding subsists⁶;

"regulated market" means a multilateral system operated and/or managed 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 and/or systems, and which is authorised and functions regularly and in accordance with the provisions of Title VI;

"retail client" means a client who is not a professional client;

“the State” means the Republic of Ireland

⁶ IIA definition.

"subsidiary" means a subsidiary undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC including any subsidiary of a subsidiary undertaking of an ultimate parent undertaking.

"systematic internaliser" means an investment firm which, on an organised, frequent and systematic basis, deals on own account by executing client orders for liquid shares outside a regulated market or an MTF;

"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 and/or ancillary services 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 and/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;

(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 EU Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities;

(2) In order to take account of developments on financial markets, and to reflect further developments at European Commission level, the

definitions set out at (1) above may be changed by the Minister by regulation.

(3) The provisions of Schedule Two of these Regulations shall apply and have effect in addition to the other provisions of these Regulations as if the provisions of Schedule Two were set out in the body of these Regulations⁷.

References : Article 2 and Article 3 of the Markets in Financial Instruments Directive, Section 3 of the Stock Exchange Act 1995 and Section 2 of the Investment Intermediaries Act 1995

Exemptions

4. (1) These Regulations shall not apply to:

(a) insurance undertakings as defined in Article 1 of Directive 73/239/EEC or assurance undertakings as defined in Article 1 of Directive 2002/83/EC⁸ or undertakings carrying on the reinsurance and retrocession activities referred to in Directive 64/225/EEC;

(b) persons which provide investment services exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings;

(c) persons providing an investment service where that service is provided in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the provision of that service;

(d) persons who do not provide any investment services or activities other than dealing on own account, unless they are market makers or deal on own account outside a regulated market or an MTF on an organised, frequent and systematic basis by providing a system accessible to third parties in order to engage in dealings with them;

⁷ Financial Regulator will request that the individual provisions are expanded rather than Scheduling the entire Directive.

⁸ Directive 2002/83/EC is a codified Directive which was transposed into Irish Law by the European Communities (Life Assurance) Regulations 1984 (as amended) and by the European Communities (Life Assurance) Framework Regulations 1994 (SI No 360 of 1994) (as amended). See attached note on legal definitions.

(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 Irish Central Bank, the National Treasury Management Agency and other public bodies charged with or intervening in the management of the public debt;

(h) An Post (including any postmaster acting on its behalf) or the Prize Bond Company Ltd. or any successor to the Prize Bond Company Ltd as operator of the Prize Bond scheme, when any of the bodies or persons referred to in this subparagraph is acting as an agent of or otherwise for that purpose on behalf of the Minister of the National Treasury Management Agency or,

(i) collective investment undertakings and pension funds and the depositaries and managers of such undertakings;

(j) persons

(i) dealing on own account in financial instruments, or

(ii) providing investment services in commodity derivatives or derivative contracts included in paragraph (j) of the definition of financial instruments to the clients of their main business,

provided this is an ancillary activity to their main business when considered on a group basis, and that their main business is not the provision of either investment services within the meaning of these Regulations or any of the services contained in Annex I of Directive 2000/12/EC;

(l) persons providing investment advice in the course of providing another professional activity not covered by these Regulations provided that the provision of such advice is not specifically remunerated;

(m) persons whose main business consists of dealing on own account in commodities and/or commodity derivatives. This exception shall not apply where the persons that deal on own account in commodities and/or commodity derivatives are part of a group the main business of which is the provision of either investment services within the meaning of these Regulations or any of the services contained in Annex I of Directive 2000/12/EC;

(n) firms which provide investment services and/or perform investment activities consisting exclusively in dealing on 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 which deal for the accounts of other members of those markets or make prices for them and which are guaranteed by clearing members of the same markets, where responsibility for ensuring the performance of contracts entered into by such firms is assumed by clearing members of the same markets;

(o) an investment business firm which the supervisory authority has determined does not require an authorisation because the provision of investment business services is only carried out because it is necessary to the main activities of the investment business firm, and, for these purposes, the determination of the supervisory authority shall be for a fixed period only and shall be subject to whatever reporting requirements the supervisory authority deems appropriate, or

(p) the personal representative of a deceased person in respect of his actions as a personal representative or a trustee in respect of his actions as a trustee of a trust, where 'personal representative' has the same meaning as it has in the Succession Act 1965, and 'trustee' has the same meaning that it has in the Trustee Act 1893, provided that this paragraph shall not apply where the principal objective of the trust is to provide investment services to members of the public, or

(q) notwithstanding the obligations imposed on liquidators and receivers under this Act, a person appointed as a liquidator or receiver of a company in respect of any activities relating to the liquidation or receivership, or

(r) any collective investment undertaking including its manager which is not established in the State but which:

- (i) has received approval from the Bank, under the powers granted to it under other enactments, to market units of the undertaking in the State; or
- (ii) has been authorised by the competent authority of another Member State under [Directive 85/611/EEC]⁹, or

(s) a practising member of an approved professional body, not being a certified person, who holds at his principal place of business, on behalf of clients, share certificates in private limited companies owned by those clients where the member holds the share certificates only in order to facilitate the orderly management of the private limited company's statutory records, where the holding of the share certificates arises from the provision of professional services by the member to the client.

(2) The rights conferred by this Regulation shall not extend to the provision of services as counterparty in transactions carried out by public bodies dealing with public debt or by members of the European System of Central Banks 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 performing equivalent functions under national provisions.

(3) These Regulations do not apply to persons for which the State is the home Member State where they:¹⁰

(a) are not allowed to hold clients' funds or securities and which for that reason are not allowed at any time to place themselves in debit with their clients, and

(b) are not allowed to provide any investment service except the reception and transmission of orders in transferable securities and units in collective investment undertakings and the provision of investment advice in relation to such financial instruments, and

⁹ Update.

¹⁰ Such firms are not covered by the ISD – they are for the IIA “investment business firms”. To retain the status quo, these firms should be excluded from the provisions of these Regulations.

The choice provided by Article 3 should, perhaps, be a matter for primary legislation unless it is felt that the Minister may do so by regulation. If it is to be effected it should be drafted in a manner that states something like: “These Regulations shall not apply to ...”. These persons are in any event still caught by the provisions of the IIA – Part IV. If this category is included here – Part IV provisions will need to be repeated here.

(c) in the course of providing that service, are allowed to transmit orders only to:

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

(ii) credit institutions authorised in accordance with Directive 2000/12/EC;

(iii) branches of investment firms or of credit institutions which are 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 laid down in the Directive, in Directive 2000/12/EC or in Directive 93/6/EEC;

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

(v) investment companies with fixed capital, as defined in Article 15(4) of Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent, the securities of which are listed or dealt in on a regulated market in a Member State;

and where the activities of those persons are regulated by the Bank, by a Government Department or other public authority.

(4) Persons excluded from the scope of these Regulations according to paragraph (3) cannot benefit from the freedom to provide services and/or activities or to establish branches as provided for in Regulation 48 and Regulation 50.

Reference : Article 2 and 3 of the Markets in Financial Instruments Directive, Section 2(6) and (7) and Section 5 of the Investment Intermediaries Act 1995

(Note - In accordance with the Lamfalussy process, the more detailed provisions of this section will be elaborated upon in Level 2 Directives / Regulations, which are being finalised at the moment by the EU Commission)

TITLE III – TRANSITIONAL PROVISIONS

Existing regulation

5 (1) From the date of the coming into force of these Regulations, the provisions of the Investment Intermediaries Act, 1995¹¹ shall no longer apply to the activities of investment firms¹².

(2) Notwithstanding Regulation 7 of these Regulations, a person who is an “authorised investment business firm”, an “authorised member firm” or an “approved stock exchange”, pursuant to the provisions of the Investment Intermediaries Act, 1995 or the Stock Exchange Act, 1995, on the day immediately prior to the coming into operation of these Regulations shall stand authorised on the coming into operation of these Regulations, as an authorised investment firm or a regulated market as the case may be.

¹¹ SEA to be repealed by these Regulations or by primary legislation. The reference to investment firms will mean MiFID firms. This is defined in these Regulations and is different from the term “investment business” firm in the IIA.

(3) If regulations made by the Bank under a provision of the Investment Intermediaries Act, 1995 or the Stock Exchange Act, 1995, were in force immediately before the commencement of these Regulations and applied to ISD firms and on that commencement the Bank could issue similar regulations under these Regulations, then notwithstanding this Regulation, those regulations continue to apply to authorised investment firms and regulated markets as if they had been made by the Bank under these Regulations as in force after that commencement, and may be amended or revoked by the Bank accordingly.

(4) If a direction to an ISD firm given by the Bank under a provision of the Investment Intermediaries Act, 1995 or the Stock Exchange Act, 1995 was in force immediately before the commencement of these Regulations, and on that commencement the Bank could give a similar direction under these Regulations, the direction continues in force as if it had been made by the Bank under these Regulations as in force after that commencement, and may be amended or revoked by the Bank accordingly.

(5) If an order made, or a notice sent, by the Bank to an ISD firm under a provision of the Investment Intermediaries Act, 1995 or the Stock Exchange Act, 1995, was in force immediately before the commencement of these Regulations, and on that commencement, the Bank could make a similar order, or send a similar notice, under these Regulations, the order or notice continues in force as if it had been made or sent by the Bank under these Regulations as in force after that commencement, and may be amended or revoked by the Bank accordingly.

(6) If a code of conduct issued by the Bank under the Investment Intermediaries Act, 1995 or the Stock Exchange Act, 1995 was in force immediately before the commencement of these Regulations and applied to ISD firms, and if on the commencement of these Regulations the Bank could prescribe a similar code of conduct, the code of conduct continues in force and applies to authorised investment firms as if it had been made by the Bank under these Regulations as in force after that commencement, and may be amended or revoked by the Bank accordingly.

(7) A person who, immediately before the commencement of these Regulations, was holding office as an authorised officer under the Investment Intermediaries Act, 1995 or the Stock Exchange Act, 1995, continues to hold

that office for the purposes of these Regulations as in force after that commencement.

Reference : Article 71 of MiFID

TITLE IV – AUTHORISATION OF INVESTMENT FIRMS¹³

Competent Authority

6. The Bank shall be the competent authority in the State for the purposes of the Directive.

Reference : Article 48 of MiFID

Requirement for authorisation

7. (1) It shall be an offence for any company registered in the State or any person operating in the State to act as an investment firm, or to claim or to hold themselves out to be an investment firm unless that person is
 - (a) the holder of a an authorisation granted by the Bank in accordance with the provisions of these Regulations; or
 - (b) is authorised by a competent authority in another Member State for the purposes of the Directive; or
 - (c) stands authorised pursuant to Regulation 5 of these Regulations.
- (2) By way of derogation from paragraph (1), any market operator shall be permitted to operate an MTF, subject to the prior verification of their compliance with the provisions of Title IV and Title V excluding Regulations 14 and 18. Any existing system falling under the definition of an MTF operated by a market operator of a regulated market shall be authorised as an MTF at the request of the market operator of the regulated market provided it complies with rules equivalent to those required by this Directive for the authorisation and operation of MTFs and provided that the request concerned is made within 18 months of *(last transposition date for MiFID)*

¹³ Operating conditions moved to Title VII.

(3) For the purposes of this Regulation, an investment firm shall not be regarded as operating within the State, where it is a firm which has no branch within the State and where—

- (a) its head or registered office is in a state other than a Member State, or
- (b) its head or registered office is in a Member State outside the State, and it is a firm which 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
- (c) it is a firm which is authorised in a Member State outside the State, under the Directive but which provides investment services of a kind for which authorisation under the Directive is not available, when it is providing such services,

unless it is providing investment services to individuals in the State who do not themselves provide one or more investment services on a professional basis¹⁴.

(4) The Bank shall establish a register of all investment firms for which it is the competent authority. The register shall be publicly accessible and shall contain information on the investment services for which the investment firm is authorised. The Bank shall update the register on a regular basis..

(5) It shall be a requirement of an authorisation granted by the Bank that an investment firm

- which is a legal person has its head office and its registered office in the State; or

- which is not a legal person or which is a legal person but under its national law has no registered office have its head office in the Member State in which it actually carries on its business; or

- is a branch of an investment firm whose head or registered office is in a State other than a Member State of the European Community.

Reference : Article 1 (Scope (ie of Directive) and Article 5 (Requirement for Authorisation) of the MiFID, Section 9 and 17 of the Investment Intermediaries Act 1995, Section 17 and 25 of the Stock Exchange Act 1995.

¹⁴ As in Section 9(2) of the IIA.

Grant of authorisation

8. (1) Subject to the provisions of these Regulations, the Bank may grant or refuse to grant to any person applying to it under this Regulation an authorisation to operate as an authorised investment firm. The Bank shall not grant authorisation unless and until such time as it is fully satisfied that the applicant complies with all requirements under these Regulations.

(2) The grant of an authorisation under paragraph (1) of this Regulation may be given unconditionally or it may be given subject to such conditions or requirements or both as the Bank considers fit.

(3) An application for authorisation under paragraph (1) of this Regulation shall be in such form and contain such particulars as the Bank shall specify from time to time and, without prejudice to the generality of the aforesaid, shall include such particulars or information as the Bank may request in relation to:

- (a) the type of business to be carried on or likely to be carried on by the proposed investment firm;
- (b) any person or persons having a qualifying shareholding or having control or ownership of the proposed investment firm including any natural or legal person whose shareholding or other commercial relationship with the proposed investment firm might influence the conduct of the proposed investment firm to a material degree; and
- (c) the memorandum of association and articles of association of the proposed investment firm.

(4) A proposed investment firm shall not be authorised by the Bank under this Regulation unless—

- (a) it is a company incorporated by statute or under the Companies Acts, or is incorporated outside the State or is a company made under Royal Charter or it draws up a partnership agreement, where it is constituted as an unincorporated body of persons, if such an agreement does not already exist, or is an industrial provident society, or is a sole trader,
- (b) it satisfies the Bank that, where applicable, the memorandum of association and articles of association of the proposed investment firm contain sufficient provision so as to enable it to

operate in accordance with these Regulations, and in accordance with any condition or requirement, or both, as the Bank may impose,

- (c) it has the minimum level of capital which shall be specified by the Bank,
- (d) it satisfies the Bank as to the probity and competence of each of its directors and managers,
- (e) it satisfies the Bank as to the suitability of each of its qualifying shareholders,
- (f) it satisfies the Bank as to the organisational structure and management skills of the proposed investment firm and that adequate levels of staff and expertise will be employed to carry out its proposed activities,
- (g) it satisfies the Bank that it has and will follow established procedures to enable the Bank to be supplied with all information necessary for its supervisory functions and to enable the public to be supplied with any information which the Bank may specify,
- (h) it satisfies the Bank that the organisation of its business structure is such that it and any of its associated or related undertakings, where appropriate and practicable, are capable of being supervised adequately by the Bank,
- (i) it satisfies the Bank as to its conduct of business, its financial resources and any other matters as the Bank considers necessary in the interests of the proper and orderly regulation and supervision of authorised investment firms or in the interests of the protection of investors¹⁵.

(5) The Bank may set out conditions or requirements or both in order to monitor the solvency of an authorised investment firm which is constituted as an unincorporated body of persons or which is a natural person, including monitoring the solvency of its proprietors.

(6) A Bank may impose conditions or requirements, from time to time, in respect of the level of capital to be maintained by an authorised investment firm and where the Bank is acting as a competent authority shall have regard to the Directive and to Directive 93/6/EEC.

¹⁵ Reproduction of section 10(5) of the IIA.

(7) The Bank may require that an appointment as a director of an authorised investment firm or proposed investment firm or to the post of chief executive or manager or post equivalent thereto, on or after the granting of an authorisation under this Regulation, shall be subject to the prior approval in writing of the Bank which said approval shall not be given unless the authorised investment firm or proposed investment firm satisfies the Bank as to the probity and competence of the proposed appointee.

(8) The Bank may direct an authorised investment firm to alter its memorandum of association or articles of association in the interest of the proper and orderly regulation and supervision of investment firms or the protection of investors or both.

(9) An authorisation granted under paragraph (1) of this Regulation shall specify the classes of investment services which may be provided by the authorised investment firm concerned and the authorisation may specify additional services which an authorised investment firm may provide, including ancillary services and the Bank may amend or vary the classes of investment services or other services which may be so provided and such authorisation shall be taken as authorisation of the said authorised investment firm for the purposes of the Directive.

(10) The Bank may at any time prior to the grant or refusal of an authorisation request further information from the proposed investment firm or may instruct an authorised officer to make such inquiries or carry out such investigations as may be necessary for the purpose of evaluating properly an application under this Regulation, and such inquiries or investigations shall be carried out in accordance with these Regulations.

(11) (a) In the case of an investment firm, the Bank acting as a competent authority shall apply these Regulations, having regard to the division of responsibilities between the home and host Member States of the investment firm concerned, which are set out in the Directive and Directive 93/6/EEC and the relevant provisions of these Regulations shall be construed accordingly.

(b) Subject to the provisions of this Regulation, investment firms shall be subject to such conditions or requirements or both as may be imposed on them by the Bank in the interests of any or all of the following, namely:

- (i) the proper and orderly regulation and supervision of investment firms,
- (ii) the protection of investors or clients or both.

(12) The Bank may impose requirements on a proposed investment firm or an authorised investment firm to organise its business or corporate structure or control of any associated undertaking or related undertaking not supervised by the Bank such that the investment firm when authorised under these Regulations and, where appropriate and practicable, the business of any associated undertaking or related undertaking, either collectively or individually, is capable of being supervised to the satisfaction of the Bank under these Regulations.

(13) The Bank may impose conditions or requirements or both on an authorised investment firm which is constituted as an unincorporated body of persons [or which is a sole trader], in order to achieve an equivalent level of supervision to that pertaining to an authorised investment firm which is constituted as a corporate body.

(14) It shall be an offence for a proposed investment firm or any other person to apply for authorisation under this Regulation knowingly or recklessly using false or misleading information, or knowingly or recklessly making false or misleading statements, in relation to an application for an authorisation under this Regulation.

Article 7 of the Markets in Financial Instruments Directive, Section 11 of the Stock Exchange Act and Section 10 of the Investment Intermediaries Act

Scope of authorisation

9. (1) (a) Each authorisation shall specify the investment services which the investment firm is authorised to provide. The authorisation may cover one or more ancillary services. Authorisation shall not be granted solely for the provision of ancillary services.

(b) An authorisation granted to an investment firm under these Regulations may extend to the provision of any investment business services or cover any investment instruments (as those terms are defined in the Investment Intermediaries Act, 1995 (as amended)) not otherwise covered by these Regulations. An investment firm shall not provide any

such investment business services or provide services in respect of any such investment instruments without an authorisation.

(2) An investment firm seeking authorisation to extend its business to additional investment services or ancillary services not foreseen at the time of initial authorisation shall submit a request to the Bank for extension of its authorisation.

(3) The authorisation shall be valid for the entire European Community and shall allow an investment firm to provide the services or perform the activities, for which it has been authorised, throughout the European Community, either through the establishment of a branch or the free provision of services.

Reference : Article 6 of the Markets in Financial Instruments Directive, Section 10 of the Investment Intermediaries Act and Section 18 of the Stock Exchange Act 1995.

Procedures for granting and refusing requests for authorisation

10. (1) Whenever the Bank decides to refuse to grant authorisation to a proposed investment firm it shall serve notice on the proposed investment firm of its decision to refuse to authorise it and stating the reasons therefor.

(2) A proposed investment firm shall be informed whether or not authorisation has been granted—

(a) within six months of the date of receipt of the application, or

(b) where additional information in relation to the application has been sought by the Bank, within a period of six months after the receipt by the Bank of the additional information or the period of twelve months after the receipt of the application, whichever is the sooner;

provided that where the proposed investment firm has not provided full information to the Bank as may be required within the period of twelve months, the application shall be refused.”

(2) A proposed investment firm shall be informed whether or not authorisation has been granted—

- (a) within six months of the date of receipt of the application, or
- (b) where additional information in relation to the application has been sought by the Bank, within a period of six months after the receipt by the Bank of the additional information or the period of twelve months after the receipt of the application, whichever is the sooner;

provided that where the proposed investment firm has not provided full information to the Bank as may be required within the period of twelve months, the application shall be refused.

Reference : Article 7 of the Markets in Financial Instruments Directive, Section 10, 14 and 15 of the Investment Intermediaries Act and Section 18, 22 and 23 of the Stock Exchange Act 1995.

Withdrawal of authorisations

11. (1) The Bank may withdraw the authorisation issued to an investment firm where such an investment firm:
- (a) does not make use of the authorisation within 12 months of the granting thereof;
 - (b) expressly renounces the authorisation;
 - (c) has obtained the authorisation by making false statements or by any other irregular means;
 - (d) no longer meets the conditions under which authorisation was granted;
 - (e) is being wound up; or
 - (f) has seriously or systematically infringed the provisions of these Regulations governing the operating conditions for investment firms;
- (2) Other than in the circumstances outlined in paragraph (1)(a), an authorisation granted by the Bank under these Regulations will automatically lapse where an investment firm has not provided investment services for the preceding six months.

(3) Without prejudice to the power of the Bank to withdraw an authorisation under paragraph (1) of this Regulation, the Bank may apply to the Court in a summary manner for an order revoking the authorisation of an authorised investment firm in any or all of the following circumstances, namely, where—

- (a) it is expedient to do so in the interests of the proper and orderly regulation and supervision of investment firm in order to protect investors or in any or all of these circumstances,
- (b) an authorised investment firm has been convicted on indictment of any offence under these Regulations or any enactment or Regulation under which the Bank exercises statutory functions or any offence involving fraud, dishonesty or breach of trust,
- (c) circumstances have materially changed since the granting of the authorisation such that, if an application for 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,
- (d) the authorisation was obtained by knowingly or recklessly making false or misleading statements, or by knowingly or recklessly using false or misleading information,
- (e) an authorised investment firm has systematically failed to comply with a condition or requirement of these Regulations,
- (f) an authorised investment firm has failed to comply to a material degree with a condition or requirement of these Regulations,
- (g) an authorised investment firm no longer fulfils any or all of the conditions or requirements which were imposed when the authorisation was granted or which were subsequently imposed,
- (h) an authorised investment firm—
 - (i) no longer complies with capital or any other financial requirements specified by the Bank from time to time,
or

- (ii) is not maintaining, or is unlikely to be able to maintain, adequate capital resources or other financial resources having regard to the nature and volume of its business,
- (i) an authorised 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,
- (j) an authorised investment firm has infringed to a material degree a code of conduct or rules of conduct specified in or set out under Regulation 72 of these Regulations,
- (k) a director, manager or qualifying shareholder of a person who is an authorised investment firm no longer satisfies the Bank as to the matters specified in Regulation 8(4)(*d*) or (*e*) of these Regulations.
- (l) an authorised investment firm has failed to comply with a condition, requirement or direction, or any or all of these, imposed under these Regulations and the circumstances are such that the Bank is of the opinion that the stability and soundness of the authorised investment firm is or has been materially affected by such a failure,
- (m) an authorised investment firm has so organised its business or corporate structure such that the authorised investment firm and, 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.

(4) When the Bank proposes to withdraw the authorisation of an authorised investment firm or proposes to apply to the Court for an order to revoke the authorisation of an investment firm, the following procedure shall apply, namely, the Bank shall serve notice on the authorised investment firm of its intention and shall state its reasons in the notice.

(5) Where an application is made to the Court under this Regulation the Court may make such interim or interlocutory orders as the circumstances may require.

(6) Persons (being persons who were authorised investment firms) whose authorisation has been withdrawn or revoked (in this Regulation referred to as "former authorised investment firms") shall continue to be responsible for arranging the discharge of all obligations entered into before announcement of the withdrawal or revocation of the authorisation, unless the Bank states otherwise.

(7) Where the authorisation of an authorised investment firm is withdrawn or revoked and the former authorised investment firm, if a company, is not being wound up, or, if an unincorporated body of persons, is not the subject of a dissolution order, or, if a natural person, is not the subject of an adjudication of bankruptcy:

- (a) the former authorised investment firm shall continue to be subject to the duties and obligations imposed by these Regulations and any codes of conduct or rules of conduct or client money requirements or any other conditions or requirements imposed by the Bank under any Regulation of these Regulations until all the liabilities, duties and obligations of the said investment firm have been discharged to the satisfaction of the Bank,
- (b) the former authorised investment firm shall, as soon as possible after the revocation of the authorisation, notify the Bank and such other persons, if any, as the Bank indicates are to be notified, of the measures being taken to discharge without undue delay the liabilities, duties and obligations of the said investment firm, and
- (c) in the case where—
 - (i) the former authorised investment firm has notified the Bank in accordance with subparagraph (b) of this paragraph and the Bank is of the opinion that the measures being taken or proposed to be taken for the purposes of this section are not satisfactory, or
 - (ii) the former authorised investment firm has not so notified the Bank and the Bank is of the opinion that the former authorised investment firm has failed to so

notify as soon as possible after the authorisation was withdrawn or revoked, or

- (iii) the Bank is of the opinion that the former authorised investment firm has failed to take all reasonable steps to notify persons which the Bank has indicated, under subparagraph (b) of this paragraph, are to be notified,

then, subject to paragraph (10) of this Regulation, the Bank may give a direction in writing to the former authorised investment firm for such period, not exceeding six months, prohibiting the former authorised investment firm so directed from any or all of the following, namely—

- (I) creating any liabilities,
- (II) dealing with or disposing of any assets or specified assets of the former authorised investment firm in any manner,
- (III) engaging in any transaction or class of transaction or specified transaction,
- (IV) making payments,

without the prior authorisation of the Bank and the Bank may further direct that former authorised investment firm within two months of the initial direction to prepare and submit to it for its approval a scheme for the orderly discharge in full of the liabilities, duties and obligations concerned.

(8) Where the authorisation of an investment firm is withdrawn or revoked and the former authorised investment firm, if a company, is being wound up, or, if constituted as an unincorporated body of persons, is the subject of a dissolution order, or if a natural person is subject to an adjudication of bankruptcy then—

- (a) the liquidator or the official assignee or receiver of the former authorised investment firm shall, in addition to his duties and obligations in respect of the winding-up, dissolution or bankruptcy, be subject to the duties and obligations to which the former authorised investment firm would be subject if it

were an authorised investment firm to which paragraph (7) of this Regulation relates and paragraph (7) shall for the purposes of this paragraph be construed accordingly,

- (b) the liquidator or the official assignee or receiver shall also be subject to any conditions or requirements imposed under these Regulations as if the liquidator or the official assignee or receiver were an authorised investment firm, and
- (c) notwithstanding subparagraph (a) of this paragraph, the Bank may, where authorisation is withdrawn or revoked and where the Bank considers it appropriate in the circumstances, remove, on giving notice in writing to the liquidator, receiver or assignee of the former authorised investment firm or the official assignee, in the case of bankruptcy, the duties and obligations imposed on the liquidator, receiver or official assignee concerned to comply with subparagraph (b) of paragraph (7) of this Regulation and may impose, in writing, on that liquidator, receiver or official assignee such further duty or obligation which corresponds to that set out in paragraph (b) of that paragraph.

(9) The Bank may publish notice of withdrawal or revocation of an authorisation of an authorised investment firm in the *Iris Oifigiúil* or in one or more newspapers circulating in the State within 28 days of such withdrawal or revocation.

(10) A former authorised investment firm shall cease to operate as an investment firm.

(11) Where the Bank gives a direction under paragraph (6) of this Regulation, it may apply to the Court, on being satisfied that the direction has not been complied with, and the Court may confirm, vary or set aside the direction on such terms and for such period as the Court thinks fit.

(12) The Bank shall not apply to the Court to revoke an authorisation on the grounds set out in paragraph (2) (k) of this Regulation unless it has given an authorised investment firm an opportunity to remove the director, manager or qualifying shareholder or otherwise deal with the concerns of the Bank in relation to the probity or competence of the person concerned within such period of time as the Bank may specify.

(13) An application under this Regulation may be heard otherwise than in public.

Reference : Article 8 of the Markets in Financial Instruments Directive, Sections 16 and 61 (Part VIII) of the Investment Intermediaries Act 1995, and Section 24 of Stock Exchange Act 1995

TITLE V – REGULATION AND SUPERVISION

OF INVESTMENT FIRMS

Persons who effectively direct the business

12. (1) The Bank shall require the persons who in effect direct the business of an investment firm to be of sufficiently good repute and sufficiently experienced as to ensure the sound and prudent management of the investment firm..

(2) Where a market operator seeks authorisation to operate an MTF and the persons that effectively direct the business of the MTF are the same as those that effectively direct the business of the regulated market, those persons are deemed to comply with the requirements laid down in the first subparagraph.

(3) An investment firm must notify the Bank of any changes to its management, along with all information needed to assess whether the new staff appointed to manage the firm are of sufficiently good repute and sufficiently experienced.

(4) The Bank shall require that the management of investment firms is undertaken by at least two persons meeting the requirements laid down in paragraph (1) of this Regulation. However, by way of derogation from the first subparagraph of this paragraph, the Bank may grant authorisation to investment firms that are natural persons or to investment firms that are legal persons managed by a single natural person provided that they are satisfied that there are alternative arrangements in place which ensure the sound and prudent management of such investment firms.

Reference : Article 9 of the Markets in Financial Instruments Directive, Section 10, 36 and 37 of the Investment Intermediaries Act and Section 18, 37 and 38 of the Stock Exchange Act 1995.

Shareholders and members with qualifying holdings

13. (1) (i) The Bank shall not authorise an investment firm until it has been informed of the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and the amounts of those holdings.

(ii) The Bank shall refuse authorisation if, taking into account the need to ensure the sound and prudent management of an investment firm, it is not satisfied as to the suitability of the shareholders or members that have qualifying holdings.

(2) Where close links exist between the proposed investment firm and other natural or legal persons, the Bank shall grant authorisation only if those links do not prevent the effective exercise of the Bank's supervisory functions.

(3) If the proposed acquirer of any qualifying holding in an authorised investment firm is an investment firm, a credit institution, an insurance undertaking or a UCITS management company authorised in another Member State, or is the parent undertaking of an investment firm, credit institution, insurance undertaking or a UCITS management company authorised in another Member State, or is a person controlling an investment firm, credit institution, insurance undertaking or a UCITS management company authorised in another Member State, and if, as a result of that acquisition, the undertaking would become the acquirer's subsidiary or come under his control, the assessment of the acquisition shall be subject to the prior consultation provided for in Regulation 60.

Reference : Article 10 of the Markets in Financial Instruments Directive, Sections 10, 38 and 48 of the Investment Intermediaries Act, 1995 and Section 18, 39 and 49 of the Stock Exchange Act 1995.

Membership of an authorised Investor Compensation Scheme

14. The Bank shall seek confirmation from a proposed investment firm that it will meet its obligations under the Investor Compensation Act 1998.

Reference : Article 11 of the Markets in Financial Instruments Directive and the Investor Compensation Act

Initial capital endowment

15. The Bank shall not grant authorisation unless the applicant investment firm has sufficient initial capital in accordance with the requirements of EU Directive 93/6/EEC on the capital adequacy of investment firms having regard to the nature of the investment services a proposed investment firm seeks an authorisation to provide.

Reference : Article 12 of the Markets in Financial Instruments Directive, Administrative Notice re Capital Adequacy, Section 10 and 18 of the Investment Intermediaries Act 1995, and Sections 18 and 26 of the Stock Exchange Act 1995.

Organisational requirements

16. (1) Authorised investment firms must comply with the requirements set out in paragraphs (2) to (8) of this Regulation.

(2) An investment firm shall establish adequate policies and procedures sufficient to ensure compliance of the firm including its managers, employees and tied agents with its obligations under the provisions of these Regulations, as well as appropriate rules governing personal transactions by such persons.

(3) An investment firm shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest as defined in Regulation 35 from adversely affecting the interests of its clients.

(4) An investment firm shall take reasonable steps to ensure continuity and regularity in the performance of investment services and activities. To this end the investment firm shall employ appropriate and proportionate systems, resources and procedures.

(5) (i) An investment firm shall ensure, when relying on a third party for the performance of operational functions which are critical for the provision of continuous and satisfactory service to clients and the performance of investment activities on a continuous and satisfactory basis, that it takes reasonable steps to avoid undue additional operational risk. Outsourcing of important operational functions may not be undertaken in such a way as to impair materially the quality of its internal control and the ability of the Bank to monitor the firm's compliance with all of the firm's obligations.

(ii) An investment firm shall have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems.

(6) An investment firm shall arrange for records to be kept of all services and transactions undertaken by it which shall be sufficient to enable the Bank to monitor compliance with the requirements of these Regulations, and in particular to ascertain that the investment firm has complied with all obligations with respect to clients or potential clients.

(7) An investment firm shall, when holding financial instruments belonging to clients, make adequate arrangements so as to safeguard clients' ownership rights, especially in the event of the investment firm's insolvency, and to prevent the use of a client's instruments on own account except with the client's express consent.

(8) An investment firm shall, 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 its own account.

(9) In the case of branches of investment firms, where a branch 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 having direct access to those records, enforce the obligation laid down in paragraph (6) of this Regulation with regard to transactions undertaken by the branch.

Reference : Article 13 of the Markets in Financial Instruments Directive

(Note - In accordance with the Lamfalussy process, the more detailed provisions of this section will be elaborated upon in Level 2 Directives / Regulations, which are being finalised at the moment by the EU Commission)

Trading process and finalisation of transactions in an MTF

17. (1) Investment firms or market operators operating an MTF, in addition to meeting the requirements laid down in relation to organisational requirements in Regulation 16, shall establish

(i) transparent and non-discretionary rules and procedures for fair and orderly trading, and

(ii) objective criteria for the efficient execution of orders.

(2)(i) Investment firms or market operators operating an MTF shall establish transparent rules regarding the criteria for determining the financial instruments that can be traded under their systems.

(ii) Investment firms or market operators operating an MTF must provide, or must satisfy the Bank that there is access to, sufficient publicly available information to enable its users to form an investment judgement, taking into account both the nature of the users and the types of instruments traded.

(3) Regulation 36, Regulation 38 and Regulation 39 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. However, the members of or participants in the MTF shall comply with the obligations provided for in Regulations 36, 38 and 39 with respect to their clients when, acting on behalf of their clients, they execute their orders through the systems of an MTF.

(4) Investment firms or market operators operating an MTF shall establish and maintain transparent rules, based on objective criteria, governing access to its facility. These rules shall comply with the conditions established in Regulation 27.

(5) Investment firms or market operators operating an MTF must clearly inform its users of their respective responsibilities for the settlement of the transactions executed in that facility. Investment firms or market operators operating an MTF must have put in place the necessary arrangements to facilitate the efficient settlement of the transactions concluded under the systems of the MTF.

(6) Where a transferable security, which has been admitted to trading on a regulated market, is also traded on an MTF without the consent of the issuer of the transferable security, that issuer shall not be subject to any obligation relating to initial, ongoing or ad hoc financial disclosure with regard to the trades on that MTF.

(7) An investment firm or market operator operating an MTF must comply immediately with any instruction from the Bank to suspend or remove a financial instrument from trading.

Reference : Article 14 of the Markets in Financial Instruments Directive

Relations with third countries

18. (1) The Bank shall inform the Commission of any general difficulties which authorised investment firms encounter in establishing themselves or providing investment services and/or performing investment activities in any third country.

(2) The Bank shall cooperate with the European Commission on matters relating to the Directive and relations with third countries.

Reference : Article 15 of the Markets in Financial Instruments Directive

(Note - In accordance with the Lamfalussy process, the more detailed provisions of this section will be elaborated upon in Level 2 Directives / Regulations, which are being finalised at the moment by the EU Commission)

TITLE VI - REGULATED MARKETS

Authorisation and applicable law

19. (1) (i) Authorisation of a regulated market shall be reserved to those systems which comply with these Regulations.

(ii) Authorisation shall be granted only where the market operator satisfies the Bank that both the market operator and the systems of the regulated market comply at least with the requirements laid down in this Title.

(iii) In the case of a regulated market that is a legal person and that is managed or operated by a market operator other than the regulated market itself, the Bank shall establish how the different obligations

imposed on the market operator under these Regulations are to be allocated between the regulated market and the market operator.

(iv) The operator of the regulated market shall provide all information, including a programme of operations setting out, inter alia, the types of business envisaged and the organisational structure, necessary to enable the Bank to satisfy itself that the regulated market has established, at the time of initial authorisation, all the necessary arrangements to meet its obligations under the provisions of this Title.

(2) The operator of the regulated market shall perform tasks relating to the organisation and operation of the regulated market under the supervision of the Bank. The Bank shall keep under regular review the compliance of regulated markets with the provisions of this Title. The Bank shall monitor regulated markets to ensure that they comply at all times with the conditions for initial authorisation.

(3) (i) The market operator is responsible for ensuring that the regulated market that it manages complies with all requirements under this Title.

(ii) Market operators are entitled to exercise the rights conferred by these Regulations on the regulated market.

(4) Without prejudice to any relevant provisions of Directive 2003/6/EC on insider dealing and market manipulation, the trading conducted under the systems of a regulated market established in the State shall be governed by Irish law.

(5) The Bank may withdraw the authorisation issued to a regulated market where it:

(a) does not make use of the authorisation within 12 months from the date of authorisation, expressly renounces the authorisation in writing, or has not operated for a period of six months,

(b) has obtained the authorisation by making false or misleading statements or by any other irregular means;

(c) no longer meets the conditions under which authorisation was granted; or

- (d) has seriously or systematically infringed the provisions adopted pursuant to this regulation;

Procedures for granting and refusing requests for authorisation

20. (1) Subject to the provisions of these Regulations, the Bank may grant or refuse to grant to any person applying to it under these Regulations an authorisation to operate a regulated market. The Bank shall not grant authorisation unless and until such time as it is fully satisfied that the applicant complies with all requirements under these Regulations.
- (2) The grant of an authorisation under paragraph (1) may be given unconditionally or it may be given subject to such conditions or requirements or both as the Bank considers fit.
- (3) Whenever the Bank decides to refuse to grant authorisation to a proposed regulated market it shall serve notice on the proposed regulated market of its decision to refuse to authorise it and stating the reasons therefor.
- (4) An application for authorisation under paragraph (1) of this Regulation shall be in such form and contain such particulars as the Bank shall specify from time to time and, without prejudice to the generality of the aforesaid, shall include such particulars or information as the Bank may request in relation to:
- (a) the type of business to be carried on or likely to be carried on by the proposed regulated market;
 - (b) any person or persons having a qualifying shareholding or having control or ownership of the proposed regulated market including any natural or legal person whose shareholding or other commercial relationship with the proposed regulated market might influence the conduct of the proposed regulated market to a material degree; and where relevant,
 - (c) the memorandum of association and articles of association of the proposed regulated market.
- (5) A proposed regulated market shall not be authorised by the Bank unless—

- (a) it is a company incorporated by statute or under the Companies Acts,
- (b) it satisfies the Bank that the memorandum of association and articles of association of the proposed regulated market contain sufficient provision so as to enable it to operate in accordance with these Regulations, and in accordance with any condition or requirement, or both, as the Bank may impose,
- (c) it has the minimum level of capital which shall be specified by the Bank,
- (d) it satisfies the Bank as to the probity and competence of each of its directors and managers,
- (e) it satisfies the Bank as to the suitability of each of its qualifying shareholders,
- (f) it satisfies the Bank as to the organisational structure and management skills of the proposed regulated market and that adequate levels of staff and expertise will be employed to carry out its proposed activities,
- (g) it satisfies the Bank that it has and will follow established procedures to enable the Bank to be supplied with all information necessary for its supervisory functions and to enable the public to be supplied with any information which the Bank may specify,
- (h) it satisfies the Bank that the organisation of its business structure is such that it and any of its associated or related undertakings, where appropriate and practicable, are capable of being supervised adequately by the Bank,
- (i) it satisfies the Bank as to its conduct of business, its financial resources and any other matters as the Bank considers necessary in the interests of the proper and orderly regulation and supervision of regulated markets or in the interests of the protection of investors.

(6) The Bank may require that an appointment as a director of a regulated market or proposed regulated market or to the post of chief executive or manager or post equivalent thereto, on or after the granting of an authorisation, shall be subject to the prior approval in writing of the Bank which said approval shall not be given unless the regulated market or proposed regulated market satisfies the Bank as to the probity and competence of the proposed appointee.

(7) The Bank may direct a regulated market to alter its memorandum of association or articles of association in the interest of the proper and orderly regulation and supervision of regulated markets or the protection of investors or both.

(8) The Bank may at any time prior to the grant or refusal of an authorisation request further information from the proposed regulated market or may instruct an authorised officer to make such inquiries or carry out such investigations as may be necessary for the purpose of evaluating properly an application under these Regulations, and such inquiries or investigations shall be carried out in accordance with these Regulations.

(9) Subject to the provisions of this paragraph, regulated markets shall be subject to the conditions or requirements or both as may be imposed on them by the Bank or by these Regulations in the interests of any or all of the following, namely:

- (i) the proper and orderly regulation and supervision of regulated markets,
- (ii) the protection of investors or clients or both.

(10) The Bank may impose requirements on a proposed regulated market or a regulated market to organise its business or corporate structure or control of any associated undertaking or related undertaking not supervised by the Bank such that the regulated market when authorised under these Regulations and, where appropriate and practicable, the business of any associated undertaking or related undertaking, either collectively or individually, is capable of being supervised to the satisfaction of the Bank under these Regulations.

(11) A proposed regulated market shall be informed whether or not authorisation has been granted—

- (a) within six months of the date of receipt of the application, or
- (b) where additional information in relation to the application has been sought by the Bank, within a period of six months after the receipt by the Bank of the additional information or the period of twelve months after the receipt of the application, whichever is the sooner;

provided that where the proposed regulated market has not provided full information to the Bank as may be required within the period of twelve months, the application shall be refused.

(12) It shall be an offence for a proposed regulated market or any other person to apply for authorisation under these regulations knowingly or recklessly using false or misleading information, or knowingly or recklessly making false or misleading statements, in relation to the application.

Withdrawal of authorisations

21. (1) The Bank may withdraw the authorisation issued to a regulated market where such a regulated market:

- (a) does not make use of the authorisation within 12 months of the granting thereof;
- (b) expressly renounces the authorisation;
- (c) has obtained the authorisation by making false statements or by any other irregular means;
- (d) no longer meets the conditions under which authorisation was granted;
- (e) is being wound up; or
- (f) has seriously or systematically infringed the provisions of these Regulations governing the operating conditions for regulated markets;

(2) Other than in the circumstances outlined in paragraph (1)(a), an authorisation granted by the Bank under these Regulations will automatically lapse where a regulated market has not operated for the preceding six months.

(3) Without prejudice to the power of the Bank to withdraw an authorisation under paragraph (1) of this Regulation, the Bank may apply to the Court in a summary manner for an order revoking the authorisation of a regulated market in any or all of the following circumstances, namely, where—

- (a) it is expedient to do so in the interests of the proper and orderly regulation and supervision of regulated market in order to protect investors or in any or all of these circumstances,

- (b) a regulated market has been convicted on indictment of any offence under these Regulations or any enactment or Regulation under which the Bank exercises statutory functions or any offence involving fraud, dishonesty or breach of trust,
- (c) circumstances have materially changed since the granting of the authorisation such that, if an application for 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,
- (d) the authorisation was obtained by knowingly or recklessly making false or misleading statements, or by knowingly or recklessly using false or misleading information,
- (e) a regulated market has systematically failed to comply with a condition or requirement of these Regulations,
- (f) a regulated market has failed to comply to a material degree with a condition or requirement of these Regulations,
- (g) a regulated market no longer fulfils any or all of the conditions or requirements which were imposed when the authorisation was granted or which were subsequently imposed,
- (h) a regulated market—
 - (i) no longer complies with capital or any other financial requirements specified by the Bank from time to time, or
 - (ii) is not maintaining, or is unlikely to be able to maintain, adequate capital resources or other financial resources having regard to the nature and volume of its business,
- (i) a regulated market 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,

- (j) a regulated market has infringed to a material degree a code of conduct or rules of conduct specified in or set out under Regulation 72 of these Regulations,
- (k) a director, manager or qualifying shareholder of a person who is a regulated market no longer satisfies the Bank as to the matters specified in Regulation 20(4)(d) or (e) of these Regulations.
- (l) a regulated market has failed to comply with a condition, requirement or direction, or any or all of these, imposed under these Regulations and the circumstances are such that the Bank is of the opinion that the stability and soundness of the regulated market is or has been materially affected by such a failure,
- (m) a regulated market has so organised its business or corporate structure such that the regulated market and, 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.

(4) When the Bank proposes to withdraw the authorisation of a regulated market or proposes to apply to the Court for an order to revoke the authorisation of a regulated market, the following procedure shall apply, namely, the Bank shall serve notice on the regulated market of its intention and shall state its reasons in the notice.

(5) Where an application is made to the Court under this Regulation the Court may make such interim or interlocutory orders as the circumstances may require.

(6) Persons (being persons who were regulated markets) whose authorisation has been withdrawn or revoked (in this Regulation referred to as "former regulated markets") shall continue to be responsible for arranging the discharge of all obligations entered into before announcement of the withdrawal or revocation of the authorisation, unless the Bank states otherwise.

(7) Where the authorisation of a regulated market is withdrawn or revoked and is not being wound up:

- (a) the former regulated market shall continue to be subject to the duties and obligations imposed by these Regulations and any codes of conduct or rules of conduct or client money requirements or any other conditions or requirements imposed by the Bank under any Regulation of these Regulations until all the liabilities, duties and obligations of the said regulated market have been discharged to the satisfaction of the Bank,
- (b) the former regulated market shall, as soon as possible after the revocation of the authorisation, notify the Bank and such other persons, if any, as the Bank indicates are to be notified, of the measures being taken to discharge without undue delay the liabilities, duties and obligations of the said regulated market, and
- (c) in the case where—
 - (i) the former regulated market has notified the Bank in accordance with subparagraph (b) of this paragraph and the Bank is of the opinion that the measures being taken or proposed to be taken for the purposes of this section are not satisfactory, or
 - (ii) the former regulated market has not so notified the Bank and the Bank is of the opinion that the former regulated market has failed to so notify as soon as possible after the authorisation was withdrawn or revoked, or
 - (iii) the Bank is of the opinion that the former regulated market has failed to take all reasonable steps to notify persons which the Bank has indicated, under subparagraph (b) of this paragraph, are to be notified,

then, subject to paragraph (10) of this Regulation, the Bank may give a direction in writing to the former regulated market for such period, not exceeding six months, prohibiting the

former regulated market so directed from any or all of the following, namely—

- (I) creating any liabilities,
- (II) dealing with or disposing of any assets or specified assets of the former regulated market in any manner,
- (III) engaging or facilitating any transaction or class of transaction or specified transaction,
- (IV) making payments,

without the prior authorisation of the Bank and the Bank may further direct that former regulated market within two months of the initial direction to prepare and submit to it for its approval a scheme for the orderly discharge in full of the liabilities, duties and obligations concerned.

(8) Where the authorisation of a regulated market is withdrawn or revoked and the former regulated market, if a company, is being wound up, or, if constituted as an unincorporated body of persons, is the subject of a dissolution order, or if a natural person is subject to an adjudication of bankruptcy then—

- (a) the liquidator or the official assignee or receiver of the former regulated market shall, in addition to his duties and obligations in respect of the winding-up, dissolution or bankruptcy, be subject to the duties and obligations to which the former regulated market would be subject if it were a regulated market to which paragraph (7) of this Regulation relates and paragraph (7) shall for the purposes of this paragraph be construed accordingly,
- (b) the liquidator or the official assignee or receiver shall also be subject to any conditions or requirements imposed under these Regulations as if the liquidator or the official assignee or receiver were a regulated market, and
- (c) notwithstanding subparagraph (a) of this paragraph, the Bank may, where authorisation is withdrawn or revoked and where the Bank considers it appropriate in the circumstances, remove,

on giving notice in writing to the liquidator, receiver or assignee of the former regulated market or the official assignee, in the case of bankruptcy, the duties and obligations imposed on the liquidator, receiver or official assignee concerned to comply with subparagraph (b) of paragraph (7) of this Regulation and may impose, in writing, on that liquidator, receiver or official assignee such further duty or obligation which corresponds to that set out in paragraph (b) of that paragraph.

(9) The Bank may publish notice of withdrawal or revocation of an authorisation of a regulated market in the *Iris Oifigiúil* or in one or more newspapers circulating in the State within 28 days of such withdrawal or revocation.

(10) A former regulated market shall cease to operate as a regulated market.

(11) Where the Bank gives a direction under paragraph (6) of this Regulation, it may apply to the Court, on being satisfied that the direction has not been complied with, and the Court may confirm, vary or set aside the direction on such terms and for such period as the Court thinks fit.

(12) The Bank shall not apply to the Court to revoke an authorisation on the grounds set out in paragraph (2) (k) of this Regulation unless it has given a regulated market an opportunity to remove the director, manager or qualifying shareholder or otherwise deal with the concerns of the Bank in relation to the probity or competence of the person concerned within such period of time as the Bank may specify.

(13) An application under this Regulation may be heard otherwise than in public.

Requirements for the management of the regulated market

22. (1) (i) Persons who effectively direct the business and the operations of a regulated market must satisfy the Bank that they are of sufficiently good repute and sufficiently experienced as to ensure the sound and prudent management and operation of the regulated market.

(ii) The operator of a regulated market shall inform the Bank of the identity of the persons who effectively direct the business and the operations of the regulated market and shall notify the Bank prior to any changes to this information. The operator must satisfy the Bank that the persons are fit and proper persons to occupy such positions or carry out such responsibilities. The Bank may refuse to approve proposed changes where the Bank is of the opinion that the persons identified in any notification to it pose a material threat to the sound and prudent management and operation of the regulated market.

(2) The person or persons who effectively direct the business and the operations of an approved stock exchange prior to the coming into force of these Regulations are deemed to comply with the requirements laid down in paragraph (1) of this Regulation on the date of the coming into force of these Regulations.

(3) The Bank shall refuse authorisation if it is not satisfied that the persons who will effectively direct the business of the regulated market are of sufficiently good repute or sufficiently experienced, or if there are objective and demonstrable grounds for believing that proposed changes to the management of the firm pose a threat to its sound and prudent management.

(4) The Bank shall require that the management of regulated markets is undertaken by at least two persons meeting the requirements laid down in paragraph (1) of this Regulation.

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

23. (1) The operator of a regulated market must satisfy the Bank that the persons who are in a position to exercise significant influence over the management of a regulated market are suitable.

(2) The operator of a regulated market shall:

(a) provide the Bank with all information as the Bank may request regarding the ownership of the regulated market and the market operator and 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 at (a) and (b) in such manner and at such times as the Bank may direct.

(3) The Bank may refuse to approve proposed changes to the controlling interests of a regulated market or the market operator where the Bank is of the opinion that the proposed changes pose a material threat to the sound and prudent management and operation of the regulated market.

Organisational requirements

24. A regulated market shall:

(a) have and maintain arrangements to identify clearly and manage the potential adverse consequences, for the operation of the regulated market or for its participants, of any conflict of interest between the interest of the regulated market, its owners or its operator and the sound functioning of the regulated market, and 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 manage the risks to which it is exposed, to implement appropriate arrangements and systems to identify all significant risks to its operation, and to 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.

Admission of financial instruments to trading

25. (1) (i) A regulated market shall have clear and transparent rules regarding the admission of financial instruments to trading.

(ii) The rules referred to in subparagraph (i) shall ensure that any financial instruments admitted to trading in a regulated market are capable of being traded in a fair, orderly and efficient manner and, in the case of transferable securities, are freely negotiable.

(2) 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.

(3) (i) In addition to the obligations set out in paragraphs (1) and (2) of this Regulation, a regulated market shall establish and maintain effective arrangements to verify that issuers of transferable securities that are admitted to trading on the regulated market comply with their obligations in respect of initial, ongoing or ad hoc disclosure obligations.

(ii) A regulated market shall establish arrangements which facilitate its members or participants in obtaining access to information which has been made public under Community law.

(4) A regulated markets shall establish the necessary arrangements to review regularly the compliance with the admission requirements of the financial instruments which they admit to trading.

(5) A transferable security that has been admitted to trading on a regulated market can subsequently be admitted to trading on other regulated markets without the consent of the issuer and in compliance with the relevant provisions of EU Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading. The issuer shall be informed by the regulated market of the fact that its securities are traded on that regulated market. The issuer shall not be subject to any obligation to provide information required under paragraph (3) of this Regulation directly to any regulated market which has admitted the issuer's securities to trading without its consent.

Suspension and removal of instruments from trading

26. (1) (i) The operator of a regulated market may suspend or remove from trading a financial instrument which no longer complies with the rules of the regulated market unless such a step would be likely to cause significant damage to the investors' interests or the orderly functioning of the market. This is without prejudice to the right of the Bank under [Regulation ^[16]] to demand suspension or removal of an instrument from trading.

(ii) The operator of a regulated market that suspends or removes from trading a financial instrument shall make this decision public and shall communicate all relevant information to the Bank. The Bank shall inform the competent authorities of the other Member States of that fact.

(2) Where the Bank directs the suspension or removal of a financial instrument from trading on one or more regulated markets pursuant to Regulation ^[17] it shall immediately make public its decision and inform the competent authorities of the other Member States.

(ii) Where the Bank is informed by the competent authority of another Member State of the suspension or removal of a financial instrument from trading on one or more regulated markets, and except where it could cause significant damage to the investors' interests or the orderly functioning of the market, the Bank shall direct the suspension or

¹⁶ A specific power may be required to be drafted or adopted from the SEA.

¹⁷ Ibid.

removal of that financial instrument from trading on the regulated markets and MTFs that operate under its authority.

Access to the regulated market

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

(2) The rules shall 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 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) of this Regulation;

(e) the rules and procedures for the clearing and settlement of transactions concluded on the regulated market.

(3) A regulated market may only admit as members of or participants in the regulated market, investment firms, credit institutions authorised under Directive 2000/12/EC and other persons who, in the opinion of the regulated market:

(a) are fit and proper;

(b) have a sufficient level of trading ability and competence;

(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) The obligations contained in Regulations 36, 38 and 39 do not apply to transactions concluded on a regulated market between members of and participants in that regulated market. This paragraph is without prejudice to the obligations provided for in Regulations 36, 38 and 39 with respect to their clients when a member or participant executes orders on a regulated market for or on behalf of their clients.

(5) The rules on access to or membership of a regulated market shall provide for the direct or remote participation of investment firms and credit institutions.

(6) (i) Regulated markets from other Member States may, without further legal or administrative requirements, and in accordance with the procedures and provisions of these Regulations, provide appropriate arrangements in the State to facilitate access to and trading on those markets by remote members or participants established in the State.

(ii) Regulated markets authorised in the State and wishing to conduct business in other Member States shall communicate to the Bank the name of the Member State in which it intends to provide such arrangements. The Bank shall communicate, within one month, this information to the competent authority of the Member State in which the regulated market intends to provide such arrangements.

(iii) The Bank shall, on the request of the competent authority of the host Member State referred to in subparagraph (ii) and within a reasonable time, communicate the identity of the members or participants of the regulated market established in the State .

(7) The operator of a regulated market established in the State shall communicate to the Bank regularly, as the Bank may require, the list of the members and participants of the regulated market to the Bank.

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

28. (1) (i) A regulated market shall establish and maintain effective arrangements and procedures for the regular monitoring of the compliance by their members or participants with the rules of the regulated market.

(ii) A regulated market shall monitor transactions undertaken by their members or participants under their systems in order to identify breaches of the rules, disorderly trading conditions or conduct that may involve market abuse.

(2) Operators of a regulated market shall report significant breaches of their rules or disorderly trading conditions or conduct that may involve market abuse to the Bank. The operator of the regulated market shall supply the relevant information to the Bank without delay and shall provide full assistance in investigating and prosecuting market abuse occurring on or through the systems of the regulated market.

Pre-trade transparency requirements for regulated markets

29. (1)(i) A regulated market shall make public current bid and offer prices and the depth of trading interests at those prices which are advertised through their systems for shares admitted to trading. This information shall be made available to the public on reasonable commercial terms and on a continuous basis during normal trading hours.

(ii) Regulated markets may give access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements they employ for making public the information under subparagraph (i) to investment firms that are obliged to publish their quotes in shares pursuant to Regulation 44.

(2) The Bank may waive the obligation for regulated markets to make public the information referred to in paragraph (1) of this Regulation based on the market model or the type and size of orders in the cases defined in accordance with Schedule Two. The Bank may waive the obligation in respect of transactions that are large in scale compared with transactions of normal market size for the share or type of share in question.

Post-trade transparency requirements for regulated markets

30. (1) (i) A regulated market shall make public the price, volume and time of transactions executed on that market in respect of shares admitted to trading. Details of all such transactions shall be made public, on a reasonable commercial basis and as close to real-time as possible.

Regulated markets may give access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements they employ for making public the information under the subparagraph (i) to investment firms that are obliged to publish the details of their transactions in shares pursuant to Regulation 45.

(2) The Bank may permit regulated markets to defer publication of the details of transactions based on their type or size. In particular, the Bank may authorise the deferred publication in respect of transactions that are large in scale compared with transactions of normal market size for that share or that class of shares. Arrangements for deferred trade-publication approved by the Bank must be clearly disclosed to market participants and the public.

Provisions regarding central counterparty and clearing and settlement arrangements

31. (1) Regulated markets shall not be prevented from entering 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 and/or settlement of some or all trades concluded by market participants under their systems.

(2) The Bank may not oppose the use by a regulated market of central counterparty, clearing houses and/or settlement systems in another Member State except where this is demonstrably necessary in order to maintain the orderly functioning of that regulated market and taking into account the conditions for settlement systems established in Regulation 31.

List of regulated markets

32. The Bank shall draw up a list of the regulated markets for which it is the home Member State and shall forward that list to the other Member States and to the EU Commission. Any subsequent changes shall be notified in the same way.

TITLE VII

OPERATING CONDITIONS FOR INVESTMENT FIRMS

Review of conditions for initial authorisation

33. (1) An investment firm authorised by the Bank under these Regulations or standing authorised under Title III must comply at all times with the condition on which initial authorisation was granted.
- (2) The Bank shall monitor compliance by an investment firm with its obligations under these Regulations. Investment firms must notify the Bank of any material changes to the conditions for initial authorisation.
- (3) The Bank may, with the consent of the Minister, delegate administrative, preparatory or ancillary tasks related to the review of the conditions for initial authorisation for investment firms which only provide investment advice.

Reference : Article 16 of the Markets in Financial Instruments Directive

General obligation in respect of on-going supervision

34. (1) The Bank shall monitor the activities of investment firms so as to assess compliance with the operating conditions provided for in these Regulations. The Bank may obtain any information which it deems necessary to assess the compliance of investment firms with those obligations.

(2) In the case of investment firms which provide only investment advice, the Bank may, with the consent of the Minister, delegate administrative, preparatory or ancillary tasks related to the regular monitoring of operational requirements.

Reference : Article 17 of the Markets in Financial Instruments Directive

Conflicts of Interest

35. (1) Investment firms must take all reasonable steps to identify conflicts of interest within their organisation or between the organisation and third parties, including their managers, employees and tied agents, or any person directly or indirectly linked to them by control, and between themselves and their clients or between one client and another that arise in the course of providing any investment and ancillary services, or combinations thereof.

(2) Where organisational or administrative arrangements made by an investment firm to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to client interests will be prevented, the investment firm shall clearly disclose the general nature and/or sources of conflicts of interest to the client before undertaking business on its behalf.

Reference : Article 18 of the Markets in Financial Instruments Directive

Reference

(Note - In accordance with the Lamfalussy process, the more detailed provisions of this section will be elaborated upon in Level 2 Directives / Regulations, which are being finalised at the moment by the EU Commission)

Conduct of business obligations when providing investment services to clients

36. (1) When providing investment services and/or, where appropriate, ancillary services to clients, an investment firm shall act honestly, fairly and professionally in accordance with the best interests of its clients and comply, in particular, with the principles set out in paragraphs (2) to (8) of this Regulation.

(2) All information, including marketing communications, addressed by an investment firm to clients or potential clients shall be fair, clear and not misleading. Marketing communications shall be clearly identifiable as such.

(3) Appropriate information shall be provided in a comprehensible form to clients or potential clients about:

- the investment firm and its services,

- financial instruments and proposed investment strategies; this should include appropriate guidance on and warnings of the risks associated with investments in those instruments or in respect of particular investment strategies,

- execution venues, and

- costs and associated charges

so that the clients or potential clients are reasonably able to understand the nature and risks 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. This information may be provided in a standardised format.

(4) When providing investment advice or portfolio management the investment firm shall obtain the necessary information regarding the client's or potential client's knowledge and experience in the investment field relevant to the specific type of product or service, his financial situation and his investment objectives so as to enable the firm to recommend to the client or potential client the investment services and financial instruments that are suitable for him.

(5)(i) Investment firms shall, when providing investment services other than those referred to in paragraph (4), ask the client or potential client to provide information regarding his knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the investment firm to assess whether the investment service or product envisaged is appropriate for the client.

(ii) In case the investment firm considers, on the basis of the information received under subparagraph (i) above, that the product or service is not appropriate to the client or potential client, the investment firm shall warn the client or potential client. This warning may be provided in a standardised format.

(iii) In cases where the client or potential client elects not to provide the information referred to under paragraph (4) above, or where he provides insufficient information regarding his knowledge and experience, the investment firm shall warn the client or potential client that such a decision will not allow the firm to determine whether the service or product envisaged is appropriate for him. This warning may be provided in a standardised format.

(6) Investment firms may, when providing investment services that only consist of execution and/or the reception and transmission of client orders with or without ancillary services, provide those investment services to their clients without the need to obtain the information or make the determination provided for in paragraph (5) where all the following conditions are met:

- the above services relate to shares admitted to trading on a regulated market (or in an equivalent third country market), money market instruments, bonds or other forms of securitised debt (excluding those bonds or securitised debt that embed a derivative), units in a UCITS and other non-complex financial instruments. A third country market shall be considered as equivalent to a regulated market if it complies with requirements equivalent to those established under Title VI. For this purpose reference may be had to a list of those markets that are to be considered as equivalent as published by the European Commission from time to time.

- the service is provided at the initiative of the client or potential client,

- the client or potential client has been clearly informed that in the provision of this service the investment firm is not required to assess the suitability of the instrument or service provided or offered and that therefore the client or potential client does not benefit from the corresponding protection of the relevant conduct

of business rules; this warning may be provided in a standardised format,

- the investment firm complies with its obligations under Regulation 35.

(7) 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 the rights and obligations of the investment firm and its clients, and the other terms on which the firm will provide services to its clients. The rights and obligations of the investment firm and its clients may be incorporated by reference to other documents or legal texts.

(8) An investment firm must provide to its clients adequate reports on the services provided to its clients. These reports shall include, where applicable, the costs associated with the transactions and services undertaken on behalf of the clients.

(9) In cases where an investment service is offered as part of a financial product which is already subject to other provisions of Community legislation or common European standards related to credit institutions and consumer credits with respect to risk assessment of clients and/or information requirements, this service shall not be additionally subject to the obligations set out in this Section.

(10) Investment firms shall comply with the requirements set out in Schedule Two when providing services to clients.

Reference : Article 19 of the markets in Financial Instruments Directive, Section 29,30,37 and 52(2)(d) of the Investment Intermediaries Act 1995, Section 38 and 52(2)9D) of the Stock Exchange Act.

(Note - In accordance with the Lamfalussy process, the more detailed provisions of this section will be elaborated upon in Level 2 Directives / Regulations, which are being finalised at the moment by the EU Commission)

Provision of services through the medium of another firm.

37. (1) Where an investment firm receives an instruction to perform investment or ancillary services on behalf of a client through the medium of another investment firm it may rely on client information transmitted by the latter firm. The investment firm which mediates the instructions will remain responsible for the completeness and accuracy of the information transmitted.

(2) Where an investment firm receives an instruction to perform investment or ancillary services on behalf of a client through the medium of another investment firm it may rely on any recommendations in respect of the service or transaction that have been provided to the client by that other investment firm. The investment firm which mediates the instructions will remain responsible for the appropriateness for the client of the recommendations or advice provided.

(3) An investment firm that receives client instructions or orders through the medium of another investment firm shall remain responsible for concluding the service or transaction in accordance with these Regulations.

Reference : Article 20 of the Markets in Financial Instruments Directive, Sections 25,26,27,28,19 and 31 of the Investment Intermediaries Act 1995.

Obligation to execute orders on terms most favourable to the client

38. (1) (i) When executing orders, investment firms shall take all reasonable steps to obtain the best possible result for their clients taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order.

(ii) Notwithstanding (i) above, whenever there is a specific instruction from the client the investment firm shall execute the order following the specific instruction.

(2) Investment firms must establish and implement effective arrangements for complying with paragraph (1) of this Regulation.

(3) Investment firms must establish and implement an order execution policy to allow them to obtain, for their client orders, the best possible

result in accordance with paragraph (1) of this Regulation. An order execution policy shall include, in respect of each class of financial instruments, information on the different venues where the investment firm executes its client orders and the factors affecting the choice of execution venue. It shall at least include those venues that enable the investment firm to obtain on a consistent basis the best possible result for the execution of client orders.

(4) (i) Investment firms must provide appropriate information to their clients on their order execution policy and must obtain the prior consent of their clients to the execution policy.

(ii) Where an order execution policy provides for the possibility that client orders may be executed outside a regulated market or an MTF, the investment firm shall, in particular, inform its clients of this fact. Investment firms must obtain the prior express consent of their clients, either in the form of a general agreement or in respect of individual transactions, before proceeding to execute their orders outside a regulated market or an MTF.

(5) Investment firms must regularly monitor the effectiveness of their order execution arrangements and execution policy and assess whether the execution venues included in the order execution policy provide for the best possible result for their clients. An investment firm shall make any changes necessary to comply with paragraph (1) of this Regulation and shall notify its clients of any material changes to their order execution arrangements or the firm's execution policy.

(6) An investment firm must demonstrate to its clients, at the client's request, that the firm has executed their orders in accordance with the firm's execution policy.

Reference : Article 21 of the Markets in Financial Instruments Directive

(Note - In accordance with the Lamfalussy process, the more detailed provisions of this section will be elaborated upon in Level 2 Directives / Regulations, which are being finalised at the moment by the EU Commission)

Client order handling rules

39. (1) An investment firm authorised to execute orders on behalf of clients must implement procedures and arrangements which provide for the prompt, fair and expeditious execution of client orders by that investment firm relative to other client orders, or the trading interests, of that investment firm. Such procedures or arrangements shall allow for the execution of otherwise comparable client orders in accordance with the time of their reception by the investment firm.

(2) In the case of a client limit order in respect of shares admitted to trading on a regulated market which is not immediately executed under prevailing market conditions, an investment firm must, unless the client expressly instructs otherwise, take measures to facilitate the earliest possible execution of that order by making public immediately that client limit order in a manner which is easily accessible to other market participants. An investment firm shall be deemed to have complied with this obligation by transmitting the client limit order to a regulated market and/or an MTF. The Bank may waive the obligation to make public a limit order that is large in scale compared with normal market size as determined under Regulation 29.

Reference : Article 22 of the Markets in Financial Instruments Directive, Sections 28,29 and 30 fo the Investment Intermediaries Act 1995.

Obligations of investment firms when appointing tied agents

40. (1) Investment firms may appoint tied agents for the purposes of promoting the services of the investment firm, soliciting business or receiving orders from clients or potential clients and transmitting them to the investment firm, placing financial instruments and providing advice to clients in respect of such financial instruments and services offered by that investment firm.

(2) (i) Where an investment firm decides to appoint a tied agent the investment firm shall remain fully and unconditionally responsible for any act or omission on the part of the tied agent when acting on behalf of the firm. The investment firm shall ensure that a tied agent discloses the capacity in which the tied agent is acting and the firm which he is representing when contacting or before dealing with any client or potential client.

(ii) In accordance with paragraphs (6), (7) and (8) of Regulation 13 tied agents registered by the Bank pursuant to the provisions of this Regulation may handle clients' money and/or financial instruments in the State on behalf and under the full responsibility of the investment firm for which they are acting or, in the case of an investment firm providing services into another Member State may handle clients' money and/or financial instruments, in the territory of that other Member State if the law of that other Member State allows a tied agent to handle clients' money.

(iii) Investment firms shall monitor the activities of their tied agents to ensure that the investment firms continue to comply with these Regulations when acting through tied agents.

(3) (i) The Bank shall establish a public register of tied agents. The register shall include all tied agents established within the State. The Bank may also include on the register all tied agents appointed by authorised investment firms other than tied agents established in the State. Investment firms must report any intended agency arrangements to the Bank at least six months before entering into such arrangements.

(ii) The Bank shall only admit a tied agent to the register where it has been established to the satisfaction of the Bank, that the tied agent is of sufficiently good repute and that the tied agent possesses appropriate general, commercial and professional knowledge so as to be able to communicate accurately all relevant information regarding the proposed service to the client or potential client of the investment firm from whom it holds an appointment.

(iii) The Bank shall update the register on a regular basis and shall make the register publicly available in such manner as the Bank sees fit.

(4) (i) Investment firms appointing tied agents must take adequate measures in order to avoid any negative impact that any services or activities of the tied agent not covered by these Regulations could have on the investment services or activities and/or ancillary services carried out by the tied agent on behalf of the investment firm.

(ii) The Bank may enter into arrangements with investment firms or other entities for the registration and supervision of tied agents by the investment firms or other entities under the supervision of the Bank.

(5) Investment firms shall only appoint tied agents entered in the public register.

Reference : Article 23 of the Markets in Financial Instruments Directive and Sections 25,26,28 and 29 of the Investment Intermediaries Act 1995.

Transactions executed with eligible counterparties

41. (1) Investment firms authorised to execute orders on behalf of clients and/or to deal on own account and/or to receive and transmit orders, may bring about or enter into transactions with eligible counterparties without being obliged to comply with the obligations under Regulations 36, 38 and 39(1).

(2) (i) Eligible counterparties for the purposes of these Regulations 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 their management companies,
- (e) pension funds and their management companies,
- (f) undertakings exempted from the application of these Regulations under paragraphs (m) and (n) of Regulation 4.),
- (g) national governments and their corresponding offices including public bodies that deal with public debt, central banks and supranational organisations, and
- (h) EU entities recognised as eligible counterparties by the law of their home State.

(ii) Classification as an eligible counterparty under subparagraph (i) shall be without prejudice to the right of such entities to request, either on a general form or on a trade-by-trade basis, treatment as clients whose business with the investment firm is subject to Regulations 36, 38 and 39.

(3) Where an investment firm enters into a transaction with an eligible counterparty in accordance with paragraph (1) it must obtain the express confirmation from the prospective counterparty that it agrees to be treated as an eligible counterparty. This confirmation may be obtained by the investment firm either in the form of a general agreement or in respect of each individual transaction.

Reference : Article 24 of the Markets in Financial Instruments Directive, Sections 25,26,27,28,29 and 31 of the Investment Intermediaries Act 1995.

TITLE VIII

MARKET TRANSPARENCY AND INTEGRITY

Obligation to uphold integrity of markets, report transactions and maintain records

42. (1) Investment firms shall keep all relevant data relating to all transactions in financial instruments which they have carried out for at least five years, whether on own account or on behalf of a client. This data must be made available to the Bank for inspection at any time. In the case of transactions carried out on behalf of clients, the records shall contain all the information and details of the identity of the client, and the information required under Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering.

(2) (i) Unless specifically exempted by the Bank under subparagraph (iii) an investment firm that executes any transaction in any financial instruments admitted to trading on a regulated market shall report details of any such transaction to the Bank or any person that the Bank nominates for that purpose as quickly as possible but no later than the

close of the following working day. This obligation shall apply whether or not such transactions were carried out on a regulated market.

(ii) The Bank shall establish the necessary arrangements in order to ensure that upon receipt by the Bank of any report under subparagraph (i), the Bank transmits this information to the competent authority of the most relevant market in terms of liquidity for those financial instruments.

(iii) Where reports of transactions in financial instruments admitted to trading on a regulated market are made to the Bank or its nominee by a regulated market, an MTF or a trade matching or reporting system, the Bank may waive the obligation of an investment firm to report any such transactions.

(3) A report made pursuant to paragraph (2) shall include details of the names and numbers of the instruments bought or sold, the quantity, the dates and times of execution and the transaction prices and means of identifying the investment firms concerned.

(4) The Bank may prescribe the manner in which reports are to be made to it.

(5) The Bank shall transmit reports provided to it or to its nominee pursuant to this Regulation by a branch of an investment firm authorised by the competent authority of another Member State, to that other competent authority unless at other authority has indicated that it does not wish to receive this information.

Reference : Article 25 of the Markets in Financial Instruments Directive, Section 19 and 20 of the Investment Intermediaries Act 1995, Section 27 and 28 of the Stock Exchange Act 1995.

(Note - In accordance with the Lamfalussy process, the more detailed provisions of this section will be elaborated upon in Level 2 Directives / Regulations, which are being finalised at the moment by the EU Commission)

Monitoring of compliance with the rules of the MTF and with other legal obligations

43.(1) Investment firms and market operators operating an MTF shall establish and maintain effective arrangements and procedures, relevant to the MTF, for the regular monitoring of the compliance by its users with its rules..

(2) Investment firms and market operators operating an MTF shall monitor the transactions undertaken by their users under their systems in order to identify breaches of those rules, disorderly trading conditions or conduct that may involve market abuse.

(3) Investment firms and market operators operating an MTF shall report without delay significant breaches of its rules or disorderly trading conditions or conduct that may involve market abuse to the Bank and shall provide full assistance to the Bank in investigating and prosecuting market abuse occurring on or through the systems of the investment firm, market operator or MTF.

Reference : Article 26 of the Markets in Financial Instruments Directive

Obligation for investment firms to make public firm quotes

44. (1) (i) Systematic internalisers in shares shall publish a firm quote in those shares admitted to trading on a regulated market for which they are systematic internalisers and for which there is a liquid market. In the case of shares for which there is not a liquid market, systematic internalisers shall disclose quotes to their clients on request.

(ii) The provisions of this Regulation shall be applicable to systematic internalisers when dealing in shares for sizes up to standard market size. Systematic internalisers that only deal in sizes above standard market size shall not be subject to the provisions of this Regulation.

(iii) Systematic internalisers may decide the size or sizes at which they will quote. For a particular share each quote must include a firm bid and/or offer price or prices for a size or sizes up to standard market size for the class of shares to which the share belongs. The price or prices shall also reflect the prevailing market conditions for that share.

(iv) Shares shall be grouped in classes on the basis of the arithmetic average value of the orders executed in the market for that share. The standard market size for each class of shares shall be a size representative of the arithmetic average value of the orders executed in the market for the shares included in each class of shares.

(v) The market for each share shall be comprised of all orders executed in the European Union in respect of that share excluding those larger than normal market size for that share.

(2) Where the Bank is the competent authority of the most relevant market in terms of liquidity for a particular share, the Bank shall determine at least annually, on the basis of the average value of the orders executed in the market in respect of that share, the class of shares to which it belongs. This information shall be made public to all market participants.

(3) (i) Systematic internalisers shall make public their quotes on a regular and continuous basis during normal trading hours. They may update their quotes at any time. A systematic internaliser may, with the permission of the Bank and under exceptional market conditions, withdraw its quotes.

(ii) Systematic internalisers shall make quotes public in a manner which is easily accessible to other market participants on a reasonable commercial basis.

(iii) Systematic internalisers shall, while complying with the provisions set down in Regulation 38, execute the orders they receive from their retail clients in relation to the shares for which they are systematic internalisers at the quoted prices at the time of reception of the order.

(iv) Systematic internalisers shall execute the orders they receive from their professional clients in relation to the shares for which they are systematic internalisers at the quoted price at the time of reception of the order. However, systematic internalisers may execute orders from professional clients at a better price in justified cases provided that this price falls within a public range close to market conditions and provided that the orders are larger than orders customarily undertaken by a retail investor.

(v) Systematic internalisers may execute orders they receive from their professional clients at prices different than their quoted prices without having to comply with the conditions established in subparagraph (iv), in respect of transactions where execution in several securities is part of one transaction or in respect of orders that are subject to conditions other than the current market price.

(vi) Where a systematic internaliser quotes only one quote or whose highest quote is lower than the standard market size receives an order from a client of a size larger than its quotation size, but lower than the standard market size, the systematic internaliser may decide to execute that part of the order which exceeds its quotation size, provided that it is executed at the quoted price, except where otherwise permitted under the conditions of the subparagraphs (iv) or (v). Where a systematic internaliser is quoting in different sizes and receives an order between those sizes, which it chooses to execute, the systematic internaliser shall execute the order at one of the quoted prices in compliance with the provisions of Regulation 38 except where otherwise permitted under the conditions of subparagraphs (iv) or (v).

(4) The Bank shall monitor:

(a) that investment firms regularly update bid and/or offer prices published in accordance with paragraph (1) of this Regulation and maintain prices which reflect the prevailing market conditions;

(b) that investment firms comply with the conditions for price improvement laid down in the subparagraph (iv) of paragraph (3) of this Regulation.

(5) Systematic internalisers may select, on the basis of their commercial policy and in an objective non-discriminatory way, the investors to whom they give access to their quotes. To that end systematic internalisers must have, and must make available to clients, clear standards for governing access to their quotes. Systematic internalisers may refuse to enter into or discontinue business relationships with clients on the basis of commercial considerations such as credit status, counterparty risk or the final settlement of a transaction.

(6) (i) In order to limit the risk of being exposed to multiple transactions from the same client, systematic internalisers may limit in a non-

discriminatory way the number of transactions from the same client which they undertake to enter at the published conditions.

(ii) Where the number and/or volume of orders sought by a client considerably exceeds what is normal market practice, systematic internalisers may, in a non-discriminatory way and in accordance with the provisions of Regulation 38 limit the total number of transactions from different clients at the same time. .

Reference : Article 27 of the Markets in Financial Instruments Directive

(Note - In accordance with the Lamfalussy process, the more detailed provisions of this section will be elaborated upon in Level 2 Directives / Regulations, which are being finalised at the moment by the EU Commission)

Post-trade disclosure by investment firms

45. (1) Investment firms that, either on their own account or on behalf of clients, conclude transactions in shares admitted to trading on a regulated market outside a regulated market or an MTF shall make public the volume and price of those transactions and the time at which they were concluded. This information shall be made public as close to real-time as possible, on a reasonable commercial basis, and in a manner which is easily accessible to other market participants.

(2) Information made public in accordance with paragraph (1) of this Regulation and the time-limits within which it is published must comply with the requirements of Regulation 30. Where the measures adopted pursuant to Regulation 30 provide for deferred reporting for certain categories of transaction in shares, this possibility shall apply mutatis mutandis to those transactions when undertaken outside regulated markets or MTFs.

Reference : Article 28 of the Markets in Financial Instruments Directive

(Note - In accordance with the Lamfalussy process, the more detailed provisions of this section will be elaborated upon in Level 2 Directives / Regulations, which are being finalised at the moment by the EU Commission)

Pre-trade transparency requirements for MTFs

46. (1) Investment firms and market operators operating an MTF shall make public current bid and offer prices that are advertised through their systems in respect of shares admitted to trading on a regulated market and the depth of trading interests at those prices. This information must be made available to the public on reasonable commercial terms and on a continuous basis during normal trading hours.

(2) The Bank may waive the obligation for investment firms or market operators operating an MTF to make public the information referred to in paragraph (1) of this Regulation based on the market model or the type and size of orders in the cases defined in accordance with Schedule Two.. In particular, the Bank may waive the obligation in respect of transactions that are large in scale compared with transactions of normal market size for the share or type of share in question.

Reference : Article 29 of the Markets in Financial Instruments Directive.

(Note - In accordance with the Lamfalussy process, the more detailed provisions of this section will be elaborated upon in Level 2 Directives / Regulations, which are being finalised at the moment by the EU Commission)

Post-trade transparency requirements for MTFs

47. (1) Investment firms and market operators operating an MTF shall make public the price, volume and time of the transactions executed under its systems in respect of shares which are admitted to trading on a regulated market. Details of all such transactions must be made public, on a reasonable commercial basis, as close to real-time as possible. This obligation does not apply to details of trades executed on an MTF that are made public under the systems of a regulated market.

(2) The Bank may permit investment firms or market operators operating an MTF to defer publication of the details of transactions based on their type or size. The Bank may permit the deferred publication in respect of transactions that are large in scale compared with transactions of normal market size for that share or that class of shares. Arrangements for

deferred trade-publication approved by the Bank must be clearly disclosed to market participants and the public.

Reference ; Article 47 of the Markets in Financial Instruments Directive

(Note - In accordance with the Lamfalussy process, the more detailed provisions of this section will be elaborated upon in Level 2 Directives / Regulations, which are being finalised at the moment by the EU Commission)

TITLE IX

CROSS BORDER ACTIVITIES

Freedom of investment firms from other Member States to provide investment services and activities in the State

48. (1) An investment firm authorised and supervised by the competent authorities of another Member State in accordance with the Directive or a credit institution authorised in accordance with Directive 2000/12/EC, may freely perform investment services and/or activities as well as ancillary services within the State, provided that such services or activities are covered by its authorisation. Ancillary services may only be provided together with an investment service and/or activity.

(2) (i) An investment firm authorised by the competent authority of another Member State intending to provide services or to carry on activities within the State for the first time, or that proposes to change the range of services or activities so provided, shall communicate the following information to the competent authorities of its home Member State:

(a) that it intends to operate within the State.

(b) a programme of operations stating in particular the investment services and/or activities as well as ancillary services which it intends to perform and whether it intends to use tied agents in the State.

(ii) In cases where the investment firm intends to use tied agents, the competent authority of the home Member State of the investment firm shall, at the request of the Bank, and within a reasonable period, communicate the identity of the tied agents that the investment firm intends to use in the State. The Bank may make public such information.

(3) The investment firm may start to provide the investment service or services, or carry on the activities, contained in the notification in the State within one month of the Bank receiving the information from the competent authority of the home Member State.

(4) In the event of a change in any of the particulars communicated in accordance with paragraph (2) of this Regulation, an investment firm shall give written notice of that change to the competent authority of the home Member State at least one month before implementing the change. The competent authority of the home Member State shall inform the Bank of those changes.

(5) Where an investment firm authorised by the competent authority of another Member State, or a market operator that operates an MTF authorised on another Member State intends to provide such arrangements in the State the investment firm or market operator shall communicate this to the competent authority of its home Member State. The competent authority of the home Member State of the MTF shall communicate, within one month, this information to the Bank.

(6) The competent authority of the home Member State of the MTF shall, on the request of the Bank and within a reasonable period, communicate the identity of the members or participants of the MTF established in that Member State.

Reference : Article 31 of the Markets in Financial Instruments Directive

Freedom of investment firms authorised in the State to provide investment services and activities in other Member States

49. (1) (i) Where an authorised investment firm intends to provide services or carry on activities within the territory of another Member State for the

first time, or proposes to change the range of services or activities so provided, it shall communicate the following information to the Bank:

(a) the Member State in which it intends to operate;

(b) a programme of operations stating in particular the investment services and/or activities as well as ancillary services which it intends to perform and whether it intends to use tied agents in the territory of the Member States in which it intends to provide services.

(ii) In cases where the authorised investment firm intends to use tied agents, the Bank shall, at the request of the competent authority of the host Member State and within a reasonable period, communicate the identity of the tied agents that the investment firm intends to use in that Member State.

(2) The Bank shall, within one month of receiving the information, forward it to the competent authority of the Member States concerned . The authorised investment firm may then commence to provide the investment service or services or carry on the activities concerned in the host Member State.

(3) In the event of a change in any of the particulars communicated in accordance with paragraph (2) of this Regulation, an investment firm shall give written notice of that change to the Bank at least one month before implementing the change. The Bank shall inform the competent authority of the host Member State of those changes.

(4) An investment firm or a market operator that operates an MTF authorised in the State shall communicate to the Bank the name of the Member State in which it intends to provide such arrangements. The Bank shall communicate, within one month, this information to the competent authority of the Member State in which the MTF intends to provide such arrangements.

(5) The Bank shall, on the request of the competent authority of the host Member State of the MTF and within a reasonable period, communicate the identity of the members or participants of the MTF established in the State.

Reference : Article 31 of the Markets in Financial Instruments Directive

Investment firms authorised in other Member States wishing to establish a branch in The State

50. (1) An investment firm authorised and supervised by the competent authorities of another Member State in accordance with the Directive or a credit institution authorised in accordance with Directive 2000/12/EC may provide investment services and/or activities as well as ancillary services within the State through the establishment of a branch provided that those services or activities are covered by the authorisation. Ancillary services may only be provided together with an investment service and/or activity.

(2) An investment firm intending to establish a branch within the State shall first notify the competent authority of its home Member State and provide it with the following information:

(a) that it plans to establish a branch in the State;

(b) a programme of operations setting out inter alia the investment services and/or activities as well as the ancillary services to be offered and the organisational structure of the branch and indicating whether the branch intends to use tied agents;

(c) the address in the State from which documents may be obtained;

(d) the names of those responsible for the management of the branch.

In cases where an investment firm uses a tied agent established in a Member State outside its home Member State, such tied agent shall be assimilated to the branch and shall be subject to the provisions the Directive relating to branches.

(3) In addition to the information at paragraph (2) of this Regulation the competent authority of the home Member State shall communicate to the Bank details of the accredited compensation scheme of which the investment firm is a member in accordance with Directive 97/9/EC. In

the event of a change in the particulars, the competent authority of the home Member State shall inform the Bank accordingly.

(4) Upon the earlier of receipt of a communication from the Bank, or two months following the date of transmission of the communication by the competent authority of the home Member State, the investment firm may establish the branch and commence business in the State.

(5) (i) An investment firm that has established a branch in the State shall comply with the obligations contained in Regulations 36, 38, 39, 42, 44 and 45 of these Regulations.

(ii) The Bank shall be responsible for ensuring that the services provided by the branch and the activities carried on by the branch within the State comply with the obligations contained in 36, 38, 39, 42, 44 and 45 and Schedule Two.

(iii) The Bank shall have the right to examine branch arrangements and to request such changes as are strictly needed to enable the Bank to enforce the obligations under Regulations 36, 38, 39, 42, 44 and 45 and Schedule Two with respect to the services and/or activities provided by the branch within the State.

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

(7) In the event of a change in any of the information communicated in accordance with paragraph (2), an investment firm shall give written notice of that change to the competent authority of the home Member State at least one month before implementing the change. The Bank shall be informed of that change by the competent authority of the home Member State.

Reference : Article 32 of the Markets in Financial Instruments Directive Section 12 of the Investment Intermediaries Act 1995 and Section 20 of the Stock Exchange Act 1995

Investment firms authorised in the State wishing to establish a branch in another Member State.

51. (1) An authorised investment firm intending to establish a branch within the territory of another Member State shall first notify the Bank of its intention to establish a branch and provide the Bank with the following information:

(a) the Member States within the territory of which it is proposed to establish a branch;

(b) a programme of operations setting out inter alia the investment services and/or activities as well as the ancillary services to be offered and the organisational structure of the branch and indicating whether the branch intends to use tied 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.

In cases where an authorised investment firm uses a tied agent established in a Member State outside the State, such tied agent shall be assimilated to the branch and shall be subject to the provisions of these Regulations relating to branches.

(2) Unless the Bank has reason to doubt the adequacy of the administrative structure or the financial situation of an authorised investment firm, taking into account the activities envisaged, it shall, within three months of receiving all the information, communicate that information to the competent authority of the host Member State and inform the authorised investment firm concerned accordingly.

(3) In addition to the information referred to in paragraph (1) of this Regulation, the Bank shall communicate details of the accredited compensation scheme of which the authorised investment firm is a member in accordance with Directive 97/9/EC to the competent authority of the host Member State. In the event of a change in the particulars, the

authorised investment firm must inform the Bank who shall inform the competent authority of the host Member State accordingly.

(4) Where the Bank does not communicate the information to the competent authority of the host Member State, it shall give reasons for this decision to the investment firm concerned within three months of receiving all of the information.

(5) Upon the earlier of receipt of a communication from the competent authority of the host Member State, or two months following the date of transmission of the communication by the Bank, the investment firm branch may establish the branch and commence business in the host Member State.

(6) In respect of branches established in the State of investment firms authorised in another Member State, the Bank may examine branch arrangements and may request such changes as are strictly needed to enable the Bank to enforce the obligations under Regulations 36, 38, 39, 42, 44 and 45 and Schedule Two with respect to the services and/or activities provided by the branch the State.

(7) Where an authorised investment firm has established a branch within another Member State, the Bank may, in the exercise of its responsibilities and after informing the competent authority of the host Member State, carry out on-site inspections in that branch.

(8) In the event of a change in any of the information communicated in accordance with paragraph (2) of this Regulation, an authorised investment firm shall give written notice of that change to the Bank at least one month before implementing the change. The Bank shall also inform the competent authority of the host Member State of that change.

**Reference : Article 32 of the Markets in Financial Instruments Directive
Section 12 of the Investment Intermediaries Act 1995 and Section 20 of the
Stock Exchange Act 1995**

Access to regulated markets

52. (1) Investment firms authorised in other Member States which are to execute client orders or to deal on own account have the right of

membership or have access to regulated markets established in Ireland by means of any of the following arrangements:

(a) directly, by setting up branches in the State;

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

(2) No additional regulatory or administrative requirements shall be imposed on investment firms exercising the right conferred by paragraph (1) of this Regulation, in respect of matters covered by these Regulations.

Reference : Article 33 of the Markets in Financial Instruments Directive.

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

53. (1) (i) Investment firms authorised in other Member States shall have the right of 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.

(ii) Access of investment firms authorised in other Member States to such facilities shall be subject to the same non-discriminatory, transparent and objective criteria as apply to local participants. The use of these facilities may not be restricted to the clearing and settlement of transactions in financial instruments undertaken on a regulated market or an MTF in the State.

(2) Regulated markets shall offer all of their members or participants the right to designate the system for the settlement of transactions in financial instruments undertaken on that regulated market, subject to:

(a) such links and arrangements between the designated settlement system and any other system or facility as are necessary to ensure the efficient and economic settlement of the transaction in question; 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 such as to allow the smooth and orderly functioning of financial markets.

(3) The rights of investment firms under paragraphs (1) and (2) of this Regulation shall be without prejudice to the right of operators of central counterparty, clearing or securities settlement systems to refuse on legitimate commercial grounds to make the requested services available.

Reference : Article 34 of the Markets in Financial Instruments Directive

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

54. (1) Investment firms and market operators operating an MTF in the State may enter into arrangements with a central counterparty or clearing house and a settlement system of another Member State with a view to providing for the clearing and/or settlement of some or all trades concluded by market participants under the systems of the MTF.

(2) (i) The Bank may prohibit the use of central counterparty, clearing houses and/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 that MTF and taking into account the conditions for settlement systems established in Regulation 3(2).

Reference : Article 35 of the Markets in Financial Instruments Directive

title x – competent authorities

Delegation by the Bank

55. The Bank may delegate the performance of its functions under Regulations 33(3), 34(2) and 40(4)(iii) to other entities.¹⁸

¹⁸ It is probable that the Financial Regulator will decide now that it is not going to exercise this discretion and so this Regulation might not be required.

Obligation to cooperate with other Member States

56. (1)(i) The Bank shall cooperate with the competent authorities of other Member States whenever necessary for the purpose of carrying out their duties under these Regulations, or making use of their powers whether set out in these Regulation or in national law.

(ii) The Bank shall render assistance to competent authorities of the other Member States. In particular, The Bank shall exchange information and cooperate in any investigation or supervisory activities.

(2)(i) The Bank shall ensure that it has the necessary administrative and organisational measures in place to facilitate the assistance provided for in paragraph (1) of this Regulation.

(ii) The Bank may use its powers under these Regulations or under national law for the purpose of cooperation, even in cases where the conduct under investigation does not constitute an infringement of any law in force in the State.

(3) (i) If the Bank has good reason to suspect that acts contrary to the provisions of these Regulations or to the Directive, are or have been carried out by entities not subject to its supervision in the territory of another Member State, the Bank shall notify the competent authority of the other Member State. This paragraph shall be without prejudice to the competencies of the Bank under these Regulations or under the Directive.

(ii) Where the Bank receives information pursuant to Article 56(4) of the Directive from the competent authority of another Member State it shall take appropriate action. The Bank shall inform the notifying competent authority of the outcome of the action and, to the extent possible, of significant interim developments. This paragraph shall be without prejudice to the competencies of the competent authority that has forwarded the information.

Reference : Section 56 of the Markets in Financial Instruments Directive

(Note - In accordance with the Lamfalussy process, the more detailed provisions of this section will be elaborated upon in Level 2 Directives / Regulations, which are being finalised at the moment by the EU Commission)

Cooperation in supervisory activities, on-the-spot verifications or in investigations

57. (1) (i) 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. In the case of investment firms that are remote members of a regulated market authorised by the Bank, the Bank may choose to address the members directly, in which case it shall inform the competent authority of the home Member State of the investment firm accordingly.

(ii) Where the Bank receives a request with respect to an on-the-spot verification or an investigation, it shall, within the framework of its powers under these Regulations and national law:

(a) carry out the verifications or investigations itself; or

(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 on the Bank's behalf.

Reference ; Article 57 of the Markets in Financial Instruments Directive, Section 8 of the Investment Intermediaries Act 1995, and Section 16 of the Stock Exchange Act.

Exchange of information between competent authorities

58. 1) (i) The Bank shall supply the competent authorities of other Member States for the purposes of the Directive with information on the identities of the entities carrying out the duties of the Bank under these Regulations.

(ii) The Bank may indicate at the time of communication that such information must not be disclosed without the express agreement of the Bank..

(2) The Bank may transmit information received by it under paragraph (1) of this Regulation and Regulations 58 and 64 to the entities notified to it under Article 49 of the Directive. The Bank shall not transmit any such information to other bodies or natural or legal persons without the express agreement of the competent authorities which disclosed it and solely for the purposes for which those authorities gave their agreement, except in duly justified circumstances. In this last case, following transmission, the Bank shall immediately inform the competent authority that sent the information in question.

(3) The Bank or other entities acting on its behalf that receive confidential information under paragraph (1) of this Regulation 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 EU Directive 93/6/EEC, 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; or

(e) in court proceedings;

(5) Regulations 58 and 63 shall not prevent the Bank from transmitting to 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.

Reference : Section 58 of the Markets in Financial Instruments Directive. Possible bearing on confidentiality provisions in Section 33AK fo the CBFSAI 2003.

Refusal to cooperate

59. 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 57 or to exchange information as provided for in Regulation 58 only where:
- (a) such an investigation, on-the-spot verification, supervisory activity or exchange of information might adversely affect the sovereignty, security or public policy of the State;
 - (b) judicial proceedings have already been initiated in respect of the same actions and the same persons before the authorities of the State;
 - (c) final judgment has already been delivered in the State in respect of the same persons and the same actions.

In the case of such a refusal, the Bank shall notify the requesting competent authority accordingly, providing as detailed information as possible.

Reference : Section 59 of the Markets in Financial Instruments Directive.

Inter-authority consultation prior to authorisation

60. (1) The Bank shall consult the competent authorities of another Member State for the purposes of the Directive prior to granting authorisation to an investment firm which is:
- (a) a subsidiary of an investment firm or credit institution authorised in that Member State; or
 - (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 natural or legal persons who control an investment firm or credit institution authorised in that Member State.
- (2) The Bank shall consult the competent authority of another Member State responsible for the supervision of credit institutions or insurance

undertakings prior to granting an authorisation to an investment firm which is:

(a) a subsidiary of a credit institution or insurance undertaking authorised in a Member State of the European Community; or

(b) a subsidiary of the parent undertaking of a credit institution or insurance undertaking authorised in a Member State of the European Community; or

(c) controlled by the same person, whether natural or legal, who controls a credit institution or insurance undertaking authorised in a Member State of the European Community.

(3) For the purposes of paragraphs (1) and (2) the Bank shall in particular consult the competent authority of other Member States for the purposes of the Directive when assessing the suitability of the shareholders or members of, and the reputation and experience of, persons who effectively direct the business of or involved in the management of another entity of the same group. The Bank shall exchange all information regarding the suitability, reputation and experience of such persons with the other competent authorities involved, for the purposes of granting an authorisation as well as for the ongoing assessment of compliance with operating conditions.

Reference : Article 60 of the Markets in Financial Instruments Directive, Part ii of the Investment Intermediaries Act and Part III of the Stock Exchange Act.

Powers for host Member States

61. (1) The Bank may, for statistical purposes, require investment firms that have established 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 established 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. The requirements for the provision of information will 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

62. (1) (i) Where the Bank is of the opinion that an investment firm acting within the State under the freedom to provide services or that has a branch within the State is in breach of the obligations arising from the provisions of or adopted pursuant to these Regulations that do not confer powers of enforcement on the Bank it shall refer those findings to the competent authority of the home Member State.

(ii) If, following a referral pursuant to in subparagraph (i) the investment firm persists in acting in a manner that is, in the opinion of the Bank, prejudicial to the interests of Irish investors or the orderly functioning of Irish markets, the Bank, after informing the competent authority of the home Member State, may take all the appropriate measures needed in order to protect investors and the proper functioning of the markets. Such measures include the possibility of preventing the investment firm concerned from initiating any further transactions within the State. The Bank shall inform the European Commission of any such measures without delay.

(2) (i) Where the Bank is of the opinion that an investment firm that has a branch within the State is in breach of the obligations arising from the provisions of or adopted pursuant to these Regulations the Bank shall require the investment firm concerned to put an end to rectify the situation as soon as possible.

(ii) If the investment firm referred to in subparagraph (i) fails to take the necessary steps to rectify the situation complained of, the Bank shall take all appropriate measures to ensure that the investment firm concerned rectifies the situation as soon as possible. The nature of those measures shall be communicated to the competent authorities of the home Member State.

(iii) If, despite the measures taken the Bank, the investment firm referred to in subparagraph (i) persists in the conduct complained of the Bank may, after informing the competent authorities of the home Member State, take appropriate measures to prevent or to penalise such conduct or any future conduct and, in so far as necessary, to prevent that

investment firm from initiating any further transactions within the State. The Bank shall inform the European Commission of any such measures without delay.

(3) (i) Where the Bank is of the opinion that the operator of a regulated market or MTF established in the State is in breach of the obligations arising from or adopted pursuant to these Regulations, the Bank shall refer those findings to the competent authority of the home Member State of the regulated market or the MTF.

(ii) If, following a referral pursuant to in subparagraph (i) the operator of the regulated market or MTF persists in acting in a manner that is, in the opinion of the Bank, prejudicial to the interests of Irish investors or the orderly functioning of Irish markets, the Bank, after informing the competent authority of the home Member State, may take all the appropriate measures needed in order to protect investors and the proper functioning of the markets. Such measures include the possibility of preventing the said regulated market or the MTF from making their arrangements available to remote members or participants established in the State. The Bank shall inform the European Commission of any such measures without delay.

(4) Any measure adopted by the Bank pursuant to paragraphs (1), (2) or (3) of this Regulation involving sanctions or restrictions on the activities of an investment firm or of a regulated market shall be justified and communicated to the investment firm or to the regulated market concerned.

Reference : Article 62 of the Markets in Financial Instruments Directive.

Exchange of information with third countries

63. (1) (i) The Bank may conclude cooperation agreements providing for the exchange of information between the competent authorities of third countries only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those required under the Directive. Such exchange of information must be intended for the performance of the tasks of those competent authorities.

(ii) The Bank may also conclude cooperation agreements providing for the exchange of information with third country authorities, bodies and natural or legal persons responsible for:

(a) the supervision of credit institutions, other financial organisations, insurance undertakings and the supervision of 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 the performance of their supervisory functions, or which administer compensation schemes, in the performance of their functions;

(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,

only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those required under the Directive. Such exchange of information must be intended for the performance of the tasks of those authorities or bodies or natural or legal persons.

(2) Where any information to be disclosed by the Bank originates in another Member State, such information may not be disclosed without the express agreement of the competent authorities which have transmitted it and, where appropriate, solely for the purposes for which those authorities gave their agreement. The same provision applies to information provided by third country competent authorities.

Reference : Article 63 of the Markets in Financial Instruments Directive

TITLE XI - AUDITORS

Relations with auditors

64. (1) The auditor of an authorised investment firm shall report promptly to the Bank any fact or decision concerning the investment firm of which the auditor has become aware while carrying out an audit of the investment firm or of an undertaking having close links with the investment firm and which is liable to:

(a) constitute a material breach of these Regulations and any code, guideline, notice, direction or other requirement issued pursuant to these Regulations;

(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 in good faith pursuant to paragraph (1) of this Regulation shall not constitute a breach of any contractual or legal restriction on disclosure of information and the person or persons making the disclosure shall not be liable in any way or to any person

Reference : Article 55 of the Markets in Financial Instruments Directive, Section 32 to 35 of the Investment Intermediaries Act 1995, and Section 33 – 36 of the Stock Exchange Act 1995

TITLE XII

REGULATION AND SUPERVISION¹⁹

Imposition of conditions or requirements

65. (1) The Bank may, in respect of an authorised investment firm or regulated market do all or any of the following, namely:
- (a) make its authorisation subject to such conditions or requirements, or both, as it considers fit, relating to the proper and orderly regulation and supervision of an authorised investment firm or regulated market,
 - (b) impose conditions or requirements or both which relate to matters in an associated undertaking or a related undertaking,
 - (c) at any time impose conditions or requirements or both on an authorised investment firm or regulated market and either amend or revoke any condition or requirement imposed under this paragraph or under paragraph (a) or (b),
 - (d) at any time after its authorisation, impose a requirement that a regulated market add, amend or revoke rules of that regulated market,
 - (e) at any time after its authorisation, impose a requirement that the regulated market add to or amend the memorandum of association or articles of association of that regulated market.
- (2) Any condition or requirement referred to in paragraph (1) of this Regulation may be imposed in relation to any or all of the following, namely:
- (a) an authorised investment firm or regulated market,
 - (b) a proposed investment firm or regulated market,
 - (c) a class of authorised investment firm or regulated market,

¹⁹ A general review needs to be carried out to ensure that the powers contained in this draft cover all of the matters provided for in Article 50(2) of the Directive.

- (d) a specified period of time or times,
- (e) an associated undertaking or related undertaking of an investment firm or regulated market,
- (f) any matter, as the Bank may consider appropriate, in the interests of the proper and orderly regulation and supervision of investment firms or regulated markets and the protection of investors.

(3) Without prejudice to the generality of paragraphs (1) to (3) of this Regulation, the Bank may impose conditions or requirements on an authorised investment firm or regulated market—

- (a) concerning the level of training, qualifications or professional competence of managers, officers or employees, or
- (b) concerning the provision of information to the Bank or such other person as may be specified by the Bank.

Asset and liability ratios and structures of authorised investment firm or regulated markets

66. (1) The Bank may impose a requirement on an authorised investment firm or regulated market to keep at all times a proportion of its assets in the form of liquid assets so as to enable the authorised investment firm or regulated market to meet its liabilities as they arise.

(2) An authorised investment firm or regulated market may keep liquid assets in addition to those required for the purpose of complying with paragraph (1) of this Regulation.

(3) For the purposes of complying with the requirements of the Bank under paragraph (1) of this Regulation, an authorised investment firm or regulated market shall have regard to the range and scale of its business and that of any relevant associated undertaking or related undertaking and the composition and character of its assets and liabilities and those of any such undertaking.

(4) The Bank may from time to time impose a requirement on an authorised investment firm or regulated market to maintain—

- (a) a specified ratio, or
- (b) a ratio which does not exceed a specified ratio, or
- (c) a ratio which is not less than a specified ratio,

between its assets and its liabilities and the specified ratio may be expressed as a percentage of the assets or liabilities concerned.

(5) A requirement of the Bank under this Regulation may be expressed to apply to all or any of the following, namely—

- (a) all authorised investment firms or regulated markets,
- (b) proposed investment firms or regulated markets of a specified category or specified categories,
- (c) the total assets or total liabilities of the authorised investment firms or regulated markets concerned,
- (d) specified assets or assets of a specified kind,
- (e) specified liabilities or liabilities of a specified kind,
- (f) a specified time or times,
- (g) during a specified period or periods,

and shall have effect in accordance with the specified terms of the requirement.

(6) A requirement under this Regulation which is in force may be revoked by the Bank or may be amended by a subsequent requirement under the relevant paragraph.

(7) The Bank may from time to time specify, as respects an authorised investment firm or regulated market, requirements as to the composition of its assets and requirements as to the composition of its liabilities.

(8) In determining, for the purposes of this Regulation, the assets and liabilities of an authorised investment firm or regulated market with which another undertaking is associated or related, there shall be attributed to the

authorised investment firm or regulated market, in a manner acceptable to or as may be specified by the Bank, the whole or part of the assets and liabilities of whatever description of the associated undertaking or related undertaking.

(9) Any requirements imposed under this Regulation by the Bank acting as a competent authority may include requirements imposed for the purposes of applying EU Directive 93/6/EEC on the capital adequacy of investment firms, or other relevant European Community Directives, to the authorised investment firm or regulated market.

(10) In this Regulation—

- (a) "specified" means specified by the Bank under this Regulation;
- (b) "liabilities" include such contingent liabilities as may be specified by the Bank from time to time for the purposes of this Regulation;
- (c) "liquid assets" means assets specified as such for the purposes of this Regulation by the Bank.

Maintenance of books and records by investment firms or regulated markets

67. (1) An investment firm or regulated market shall keep at an office or offices within the State such books and records (including books of accounts) or other documents as may be specified from time to time by the Bank and shall notify the Bank of the address of every office at which any such books or records are kept.

(2) The Bank may specify different books, records or other documents for the purposes of this Regulation and in relation to different investment firms or regulated markets or different classes of investment firm or regulated market.

(3) Books and records or other documents kept pursuant to this Regulation shall be—

- (a) in addition to any books, records or other documents to be kept by or under any other enactment, and
- (b) retained for at least such period as the Bank may specify.

Directions by the Bank

68. (1) Without prejudice to the power of the Bank to impose conditions or requirements or both under these Regulations, and, without prejudice to the powers of the Bank under paragraphs (2) or (4) of this Regulation, where the Bank considers it necessary to do so in the interests of the proper and orderly regulation and supervision of investment firm or regulated markets or the protection of investors, the Bank may give a direction to all or any of the following, namely—

- (a) any or all authorised investment firms or regulated markets,
- (b) any or all proposed investment firms or regulated markets,
- (c) any or all investment firms or regulated markets,
- (d) any or all former authorised investment firms or regulated markets,
- (e) directors and those responsible for the management of authorised investment firms or regulated markets, former authorised investment firm or regulated markets, proposed investment firm or regulated markets or investment firm or regulated markets,
- (f) any person purporting to act or whom the Bank reasonably believes is acting as or on behalf of an investment firm or regulated market,
- (g) directors of that investment firm or regulated market or those responsible for the management of that investment firm or regulated market who have failed to co-operate with an authorised officer appointed under Regulation 75 of these Regulations or an inspector appointed under Regulation 77 of these Regulations,

in relation to any matter related to the operation of an investment firm or regulated market or any matter related to an acquiring transaction within the meaning of Part XIV of these Regulations.

(2) Without prejudice to the powers of the Bank under paragraph (1) of this Regulation, and without prejudice to the powers of the Bank to impose conditions or requirements or both under these Regulations, where the Bank is of the opinion that it is necessary to do so in the interests of the proper and orderly regulation and supervision of investment firm or regulated markets or for the protection of investors or both or where an investment firm or regulated market—

- (a) has become or is, in the opinion of the Bank, likely to become unable to meet its obligations to its creditors or its clients or both, or
- (b) is not maintaining or is, in the opinion of the Bank, unlikely to be in a position to maintain adequate capital resources having regard to the volume and nature of its business, or no longer complies with capital or other financial requirements specified by the Bank from time to time, or both, or
- (c) has failed to comply with any condition or requirement imposed under these Regulations, and the circumstances are such that the Bank is of the opinion that the stability or soundness of an investment firm or regulated market is materially affected by this failure, or
- (d) is conducting business in such a manner as to jeopardise or prejudice monies or investment instruments held by or controlled by it on behalf of clients, or the rights and interests of those clients, or
- (e) has failed to provide to the Bank within such reasonable period as may be specified by it such information as it may reasonable request for the purpose of its functions under these Regulations

the Bank may give a direction in writing to the investment firm or regulated market concerned to suspend for such period (not exceeding twelve months) as shall be specified in the direction any or all of the following, that is to say—

- (i) the provision of any investment service,
- (ii) the making of payments to which subparagraph (i) of this paragraph does not relate,

- (iii) the acquisition or disposal of any assets or liabilities,
- (iv) entering into transactions or agreements of any specified kind or entering into them except in specified circumstances or to a specified extent,
- (v) soliciting business from persons of a specified kind or otherwise than from such persons or in a specified country,
- (vi) carrying on business in a specified manner or otherwise than in a specified manner,

which have not been authorised by the Bank.

(3) A direction under paragraph (1) or (2) of this Regulation may be given to a particular person or generally to all persons to whom those paragraphs apply or to a particular class of person or during a specified period of time or times, or by reference to any other matter which the Bank may consider appropriate.

(4) Where the Bank gives a direction under this Regulation, the direction shall have effect from the date specified by the Bank, and the Bank may or, where the Bank is of the opinion that the said direction is not being complied with, the Bank shall, apply to the Court in a summary manner for an order confirming the direction.

(5) The Court may, on an application being made under paragraph (4) of this Regulation, hear evidence from creditors and the Court may make, in any application under this Regulation, such interim or interlocutory order, if any, as it considers fit.

(6) While a direction under this Regulation is in force, no winding-up proceedings in relation to an authorised investment firm or regulated market or associated or related undertaking or, in the case of an authorised investment firm or regulated market or associated or related undertaking which is constituted as an unincorporated body of persons, no proceedings for an order of dissolution, or, in the case of an authorised investment firm or regulated market which is constituted as a sole trader, no bankruptcy proceedings, may be commenced or resolution for winding-up passed in relation to the authorised investment firm or regulated market or associated or related undertaking, and no receiver shall be appointed over the assets or over any part of the assets of the authorised investment firm or regulated market or

associated or related undertaking and such assets shall not be attached, sequestered or otherwise distrained except with the prior sanction of the Court.

(7) The Court may hear proceedings or part of proceedings under this Regulation otherwise than in public.

(8) A creditor who is affected by a direction under paragraph (2) of this Regulation may apply to the Court to vary or set aside that direction where it affects the interests of the creditor to a material degree.

Winding-up on application to Court

69. (1) Notwithstanding Regulation 215 of the Companies Act, 1963, the Bank may, by presenting a petition, apply to the Court to have an authorised investment firm or regulated market or former authorised investment firm or regulated market wound up on any of the following grounds, namely that—
- (a) an authorised investment firm or regulated market or former authorised investment firm or regulated market is 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 regulated market has been revoked and the former authorised investment firm or regulated market has ceased to operate as an investment firm or 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 authorised investment firm or regulated market or former authorised investment firm or regulated market be wound up,
 - (d) an authorised investment firm or regulated market or a former authorised investment firm or regulated market has failed to comply with any direction given by the Bank under these Regulations.

(2) Where the petition for the winding-up of an authorised investment firm or regulated market or former authorised investment firm or regulated market is presented by a person other than the Bank, a copy of the petition shall be served on the Bank which shall be entitled to be heard on the petition.

(3) Where an authorised investment firm or regulated market or former authorised investment firm or regulated market is being wound up voluntarily and the Bank has reason to believe that any of the grounds set out in paragraph (1) of this Regulation applies, then, the Bank may apply to the Court to have that investment firm or regulated market wound up by the Court.

(4) Where an authorised investment firm or regulated market or former authorised investment firm or regulated market is being wound up and 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 authorised investment firm or regulated market or former authorised investment firm or regulated market shall be sent also to the Bank.

(5) The Bank, in writing, authorise an officer or employee of the Bank or some other suitably qualified person to attend a meeting of creditors of an authorised or former authorised investment firm or regulated market.

(6) The Bank may, in writing, 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 or former authorised investment firm or regulated market.

(7) 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 prescribed by the Companies Acts, and

(b) may not be removed from membership of the committee without the consent of the Bank.

(8) In this Regulation –

‘committee of inspection’ means a committee of inspection appointed under Section 23 of the Companies Act 1963;

(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 authorised investment firm or regulated market or a former authorised investment firm or regulated market which is constituted as an unincorporated body of persons, 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, shall extend to the Bank and shall apply as if the grounds specified in paragraph (1) (a) to (d) of this Regulation were incorporated therein.

(11) In the case of an authorised investment firm or regulated market or a former authorised investment firm or regulated market which is constituted as an individual person, the Bank may apply by petition to the Court for an adjudication of bankruptcy within the meaning of the Bankruptcy Act, 1988, and the Bankruptcy Act, 1988 shall apply as if the grounds specified in paragraph (1) (a) to (d) of this Regulation were acts of bankruptcy (within the meaning of the Bankruptcy Act, 1988).

Restrictions on advertising

70. (1) No person shall cause to be advertised, or supply, or offer to supply, investment or ancillary services or make any other solicitation in respect of investment or ancillary services or hold himself out to be an investment firm or regulated market, where the provision of such services would be in breach of Regulation 7 of these Regulations.

(2) Without prejudice to the generality of any Regulation of these Regulations empowering the Bank to impose conditions or requirements, or both, the Bank may impose such conditions or requirements or both, on the investment firm or regulated market concerned in respect of advertising by that investment firm or regulated market as the Bank considers necessary, in the interests of—

- (a) the orderly and proper regulation and supervision of authorised investment firm or regulated markets, and/or
- (b) the protection of investors.

(3) The Bank may impose a requirement on an investment firm or regulated market or all investment firm or regulated markets to publish specified information or to display specified information at their premises.

(4) (a) If, with respect to any investment firm or regulated market, the Bank considers it expedient to do so, in the interest of the proper and orderly regulation and supervision of investment firms or regulated markets or the protection of investors, the Bank may give such investment firm or regulated market a direction in relation to the content and form of any advertisement or other means of soliciting money or financial instruments or business from potential or existing clients or in relation to the content and form of any advertisement relating to any service provided or business being undertaken by the investment firm or regulated market, or to withdraw an advertisement or to cease advertising.

(b) Without prejudice to the generality of subparagraph (a) of this paragraph, a direction under this Regulation may do all or any of the following—

- (i) prohibit the issue by the investment firm or regulated market of advertisements of all descriptions or any specified description,
- (ii) require the investment firm or regulated market to modify advertisements of a specified description in a specified manner,
- (iii) prohibit the issue by the investment firm or regulated market of any advertisements which are, or are substantially, repetitions of a specified advertisement,
- (iv) require the investment firm or regulated market to withdraw any specified advertisement or any advertisement of a specified description,
- (v) require the investment firm or regulated market to include specified information in any advertisement to be published by it or on its behalf or in any statement to the public to be made by it or on its behalf.

(6) If, in contravention of paragraph (1) of this Regulation or in contravention of a direction under this Regulation, a person issues, or causes to be issued, an

advertisement inviting persons to enter or offer to enter into an investment agreement or containing information calculated to lead directly or indirectly to persons doing so, then, subject to paragraph (9) of this Regulation—

- (a) he shall not be entitled to enforce any agreement to which the advertisement related and which was entered into after the issue of the advertisement, and
- (b) the other party shall be entitled to recover any money or other property or financial instruments paid or transferred by him under the agreement, together with compensation for any loss sustained by him as a result of having paid money or transferred property or financial instruments under the agreement.

(7) If, in contravention of paragraph (1) of this Regulation, or in contravention of a direction issued under this Regulation, a person issues or causes to be issued an advertisement inviting persons to exercise any rights conferred by a financial instrument or containing information calculated to lead directly or indirectly to persons doing so, then, subject to paragraph (8) of this Regulation—

- (a) that person shall not be entitled to enforce any obligation to which a person is subject as a result of any exercise by him after the issue of the advertisement of any rights to which the advertisement related, and
- (b) such a person shall be entitled to recover any money or other property or financial instruments paid or transferred by him under any such obligation, together with compensation for any loss sustained by him.

(8) The compensation recoverable under paragraph (6) or (7) of this Regulation shall be such as the parties may agree or as the Court may, on the application of either party, determine.

(9) The Court may allow any such agreement or obligation as is mentioned in paragraph (6) or (7) of this Regulation to be enforced or money or property or financial instruments paid or transferred under it to be retained if it is satisfied—

- (a) that the person against whom enforcement is sought or who is seeking to recover the money or property or financial instruments was not influenced, or not influenced to any material extent, by the advertisements in making his decision to enter into the agreement or as to the exercise of the rights in question, or
- (b) that the advertisement was not misleading as to the nature of the investment, the terms of the agreement or, as the case may be, the consequences of exercising the rights in question and fairly stated any risks involved in those matters.

(10) Where a person elects not to perform an agreement or an obligation which by virtue of paragraph (6) or (7) of this Regulation is unenforceable against him or by virtue of either of those paragraphs recovers money paid or other property or financial instruments transferred by him under an agreement or obligation, he shall repay any money and return any other property or financial instruments received by him under the agreement or, as the case may be, as a result of exercising the rights in question.

(11) Where any property or financial instruments transferred under an agreement or obligation to which paragraph (6) or (7) of this Regulation applies has passed to a third party the references to that property or financial instruments in this Regulation shall be construed as references to its value at the time of its transfer under the agreement or obligation.

(12) If an advertisement or other solicitation to which this Regulation relates is published and it does not include the name and address of the person who arranged with the publisher for the advertisement or solicitation, the Bank may, at any time within the period of 12 months after any publication of the advertisement or solicitation, request the publisher to supply the name and address of that person to the Bank and the publisher shall forthwith comply with that request.

(13) The Bank may—

- (a) direct a person to arrange the publication of a correction of a misleading advertisement concerning services of investment firms or regulated markets, or

- (b) direct a person to arrange the publication of a correction of an advertisement which contravenes the provisions of this Regulation, or
- (c) direct a person to arrange the publication of the fact that an offence under this Regulation has taken place and that a fine or administrative sanction, if any, has been imposed, or
- (d) arrange the publication of an advertisement correcting any misleading aspects of advertisements, published by an investment firm or regulated market,

in a manner specified by the Bank.

(14) In this Regulation "specified" means specified in a direction under this Regulation.

Exemption from restrictions on advertising

71. (1) Regulation 70 of these Regulations shall not apply to a class of advertisement specified from time to time by the Bank for the purpose of exempting from that Regulation—
- (a) advertisements appearing to the Bank to have a private character, whether by reason of a connection between the person issuing them and those to whom they are issued or otherwise, or
 - (b) advertisements appearing to the Bank to deal with investment or ancillary services only incidentally, or
 - (c) advertisements issued to persons appearing to the Bank to be sufficiently expert to understand any risks involved.

(2) An exemption under paragraph (1) of this Regulation shall be subject to such conditions as may be specified by the Bank when granting the exemption.

Code of conduct

72. (1) Subject to paragraph (2) of this Regulation, the Bank may draw up and issue a code of conduct for investment firms or regulated markets which may include provisions which seek to ensure that an investment firm or regulated market—
- (a) acts honestly and fairly in conducting its business activities in the best interests of its clients and the integrity of the market,
 - (b) acts with due skill, care and diligence in the best interests of its clients and the integrity of the market,
 - (c) has and employs effectively the resources and procedures that are necessary for the proper performance of its business activities,
 - (d) seeks from its clients information regarding their financial situations, investment experience and objectives as regards the services requested,
 - (e) makes adequate disclosure of relevant material information including commissions in its dealings with its clients,
 - (f) makes a reasonable effort to avoid conflicts of interests and, when they cannot be avoided, ensures that its clients are fairly treated, and
 - (g) complies with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of its clients and the integrity of the market,

and the Bank may impose conditions or requirements on an investment firm or regulated market or any class of investment firm or regulated market in respect of compliance with the provisions of such a code of conduct or any other code of conduct or rules of like effect.

(2) A code of conduct drawn up under paragraph (1) of this Regulation shall not apply to any of the matters covered by Schedule Two.

(3) Codes of conduct or rules of conduct referred to in paragraph (1) or (2) of this Regulation, may be applied in such a way or to such an extent as to take

account of the status or experience of the person for whom the services are provided.

(4) Codes of conduct or rules of conduct (referred to in paragraph (1) or (2) of this Regulation) may include criteria for distinguishing between different categories of investment firm or regulated markets or of investor for the purposes of this Regulation.

(5) A code of conduct drawn up by the Bank under paragraph (1) of this Regulation may be revised from time to time by the Bank.

Client money and financial instruments

73. (1) A Bank may from time to time impose requirements on authorised investment firms with respect to clients' money and clients' financial instruments and such rules or requirements (in these Regulations referred to as “client money requirements”) may include conditions under which investment firms may hold money or financial instruments, or both, for clients.

(2) Without prejudice to the generality of paragraph (1) of this Regulation, client money requirements may include requirements or rules in relation to—

- (a) the category or categories of investment firm to whom such requirements or rules apply;
- (b) the type or types of accounts to be opened and kept by an investment firm arising from its business as an investment firm;
- (c) the rights, duties and responsibilities of an investment firm in relation to money and financial instruments received, held, controlled or paid by it arising from its business as an investment firm, including the lodgement to and withdrawal from a client account of client money and client financial instruments;
- (d) the acknowledgements or statements to be issued by an investment firm in respect of client money and client financial instruments received, held, controlled or paid by it arising from its business as an investment firm;
- (e) the circumstances in which money other than client money may be paid into accounts containing client money and the

circumstances in which, and the persons for whom, money held in such accounts may be paid out;

- (f) the safekeeping of client financial instruments and documents of title relating to such financial instruments;
- (g) the use of nominee companies by investment firms;
- (h) client entitlements, including the treatment or retention of interest, income or profit arising from any client money or investment instrument or documents of title in such cases as may be specified;
- (i) the extent to which such client money requirements apply to associated and related undertakings.

(3) Without prejudice to the generality of paragraph (1) of this Regulation and notwithstanding the provisions of paragraph (2) of this Regulation, an authorised investment firm shall—

- (a) keep at an office or offices within the State such books and records (including books of accounts) in respect of client money and client financial instruments as may be specified from time to time by a Bank and notify the Bank of the address of every office at which any such books or records are kept;
- (b) ensure that any books or records required under this regulation are examined, at such intervals as may be specified by a Bank, by an auditor who shall report to the Bank and state whether in his opinion the provisions of the client money requirements imposed or rules approved under paragraph (1) of this Regulation and the provisions of this paragraph have been complied with and on such other matters as may be specified in the client money requirements imposed under paragraph (1) of this Regulation;

and an authorised investment firm which does not comply with the provisions of paragraph (a) of this paragraph or which does not ensure that books and records kept in respect of client money and client financial instruments are examined by an auditor at such intervals as shall be specified by a Bank shall be guilty of an offence.

- (4) (a) The Bank may specify different books and records for the purposes of this Regulation and in relation to different investment firms or different classes of investment firms.
- (b) Books and records to be kept pursuant to this Regulation shall be—

- (i) in addition to any books or other records to be kept by or under any other Regulation of these Regulations or any other enactment, and
- (ii) retained for at least such period as the Bank may specify.

(5) Without prejudice to the generality of paragraph (1) of this Regulation and notwithstanding the provisions of paragraph (2) of this Regulation, an authorised investment firm which knowingly holds client money in an account or accounts with an institution other than an institution or type of institution as may be specified by a Bank from time to time shall be guilty of an offence.

(6) If—

- (a) an authorised investment firm maintains an account with a credit institution or a financial institution, and
- (b) the account contains money, or relates to financial instruments or documents of title, entrusted to or received by the firm for or on account of a client,

the firm commits an offence if it fails to designate the account as a ['Regulation 73 account'] in all of its financial records.

(7) (a) No liquidator, receiver, administrator, examiner, official assignee or creditor of an investment firm shall have or obtain any recourse or right against client money or client financial instruments or documents of title relating to such financial instruments received, held, controlled 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 money and client financial instruments or documents of title relating to such financial instruments have been satisfied in full.

(b) Notwithstanding subparagraph (a) of this paragraph, a liquidator, receiver, administrator, examiner or official assignee may have recourse or right against client money or client financial instruments or documents of title relating to such financial instruments received, held, controlled or paid on behalf of a client by an investment firm in respect of such reasonable expenses as are incurred in the carrying out of their functions under these Regulations or under the Investor Compensation Act 1998, or incurred in the distribution of client money and financial

instruments to clients of the investment firm where the assets of the investment firm have been exhausted.

(c) A liquidator, receiver, administrator, examiner or official assignee shall apply to the Court before seeking recourse or right against client money or client financial instruments or documents of title relating to such financial instruments received, held, controlled or paid on behalf of a client by an investment firm under subparagraph (b) of this paragraph and the Court shall determine the matter and make such order as it sees fit.

(8) A person with whom an account is kept in pursuance of client money requirements or rules under this Regulation shall not incur any liability as constructive trustee where money is wrongfully paid from the account unless the person permits the payment with knowledge that the payment is wrongful or having deliberately failed to make inquiries in circumstances in which a reasonable and honest person would have done so.

(9) It shall be an offence for a director, officer or employee of an investment firm or any of them to misappropriate fraudulently any money or financial instruments held, controlled or paid on behalf of a client by that investment firm.

Warning notices

74. (1) The Bank may arrange for the publication of warning notices in any of the newspapers circulating in the State or elsewhere or in the *Iris Oifigiúil* where the Bank reasonably believes that a company registered in the State or any other person operating in the State is providing investment services or operating a regulated market or claiming or holding itself out to be providing investment services or operating a regulated market without an authorisation as required by these Regulations.

(2) The Bank shall endeavour to provide the company or person referred to in paragraph (1) of this Regulation with seven days notice of its intention to publish a warning notice.

TITLE XIII

ENFORCEMENT

Authorised Officers

75. (1) The Bank may, in writing, appoint persons to be authorised officers for the purposes of these Regulations.
- (2) The Bank shall provide any authorised officer with a certificate of authority.
- (3) Whenever an authorised is requested to do so by a person in relation to whom the officer is exercising a power under these Regulations, the officer shall produce the officer's certificate of authority together with some form of personal identification.

Powers of authorised officers

76. (1) The powers conferred by this Regulation may be exercised in respect of a proposed investment firm or regulated market, an authorised investment firm or regulated market, an investment firm or regulated market or a former authorised investment firm or regulated market, or a person whom the Bank has reasonable grounds to believe has provided or is providing investment or ancillary services, or an associated undertaking or related undertaking and these persons shall be referred to in this Regulation as "persons to whom this Regulation applies".
- (2) An authorised officer may, for the purpose of obtaining any information which the Bank may require to enable it to exercise any of its functions under these Regulations, do any one or more of the following things:
- (a) at all reasonable times enter any premises, at which there are reasonable grounds to believe that any investment or ancillary service or any activity in connection with an investment firm or regulated market is, or has been, carried on, or that books, records or other documents in relation to such business or activities are kept, and search and inspect the premises and any books, records or other documents on the premises;

- (b) secure for later inspection any premises or any part of a premises in which books, records or other documents are kept or there are reasonable grounds for believing that such books, records or other documents are kept;
- (c) inspect and take copies of or extracts from, or, subject to a warrant being issued for that purpose by a judge of the District Court, remove for a reasonable period for further examination, any books, records or other documents which the officer finds in the course of inspection;
- (d) require any person who carries on such investment or ancillary services or any activity in connection with an investment firm or regulated market and any person employed in connection therewith to give to the authorised officer such information as the officer may reasonably require in relation to any entries in such books, records or other documents;
- (e) require any such person to give to the officer any information which the authorised officer may require in regard to the investment or ancillary services or any activity in connection with an investment firm or regulated market or in regard to the persons carrying on services or activities or employed in connection therewith;
- (f) require any such person to give to the authorised officer any other information which the authorised officer may reasonably require in regard to such investment or ancillary services or any activity in connection with an investment firm or regulated market;
- (g) require any person by whom or on whose behalf data equipment is or has been used or any person having charge of, or otherwise concerned with the operation of, the data equipment or any associated apparatus or material, to afford the authorised officer reasonable assistance in relation thereto;
- (h) summon, at any reasonable time, any other person employed in connection with the investment or ancillary services or the activity in connection with an investment firm or regulated market to give to the authorised officer any information which

the officer may reasonably require in regard to such activity and to produce to the authorised officer any books, records or other documents which are in that person's power or control;

- (i) require any person employed in the premises to prepare a report on specified aspects of the business of the persons to whom this Regulation applies or to explain entries in any documents or other materials furnished;
- (j) may communicate with any client of an investment firm or regulated market for the purpose of confirming the investment or ancillary services which were provided to the client or the activity that was carried on;

(3) A person who has in his power, possession or procurement any books, records or other documents aforesaid shall—

- (a) produce them at the request of an authorised officer and permit him to inspect and take copies of, or extracts from, them,
- (b) at the request of an authorised officer, give any information which may be reasonably required with regard to them, and
- (c) give such other assistance and information to an authorised officer as is reasonable in the circumstances.

(4) Where any person from whom production of a book, record or other document is required claims a lien thereon the production of it shall be without prejudice to the lien.

(5) Nothing in this Regulation shall compel the production by a barrister or solicitor of a book, record or other document containing a privileged communication made by him or to him in that capacity or the furnishing of information contained in a privileged communication so made.

(6) An investment firm or regulated market and any person carrying on the business of an associated or related undertaking to which this Regulation relates shall each furnish to the Bank—

- (a) at such times as the Bank may specify from time to time such information and returns concerning the business to which the authorisation or business of the associated undertaking or

related undertaking relates as the Bank may specify from time to time (being information and returns which the Bank considers it necessary to have for the due performance of its functions under these Regulations), and

- (b) within such period as the Bank may specify, any information and returns (not being information or returns specified under paragraph (a) of this paragraph) concerning the business to which the authorisation or business of the associated undertaking or related undertaking relates that the Bank may request in writing (being information and returns which the Bank considers it necessary to have for the due performance of its functions under these Regulations).

(7) This Regulation shall apply to the business of an associated undertaking or related undertaking to the extent only that the information and returns sought by the Bank are, in the opinion of the Bank, materially relevant to the proper appraisal of the business of the investment firm or regulated market to which the associated or related undertaking relates.

(8) A requirement under this Regulation may be imposed on a person to whom this Regulation applies outside the State.

(9) The duty to produce or provide any information, document, material or explanation extends to an examiner, liquidator, receiver, official assignee or any person who is or has been an officer or employee or agent of the persons to whom this Regulation applies, or who appears to the Bank or the authorised officer to have the information, document, material or explanation in his possession or under his control.

(10) An authorised officer appointed under these Regulations, where he considers it necessary, may be accompanied by a member of the Gardaí Síochána when performing any powers conferred on an authorised officer by these Regulations.

(11) A person shall not obstruct or interfere with an authorised officer in the exercise of his powers under these Regulations.

(12) A person shall comply with any request or requirement of an authorised officer under these Regulations.

(13) In this Regulation—

- (a) **"specified"** means specified under this Regulation,
- (b) **"agent"**, in relation to a person to whom this Regulation applies or any associated or related undertaking, includes past as well as present agents, as the case may be, and includes its bankers, accountants, solicitors, auditors and its financial and other advisors, whether or not those persons are officers or persons to whom this Regulation applies.

(14) If any officer, employee, shareholder or agent of a person to whom this Regulation applies refuses to produce to an authorised officer when requested to do so any book or document which it is his duty under this Regulation to produce, or refuses to co-operate with an authorised officer when required to do so, or refuses to answer any question put to him by an authorised officer with respect to the affairs of the person to whom this Regulation applies, then the authorised officer may certify the refusal under his hand to the Court and the Court may thereupon enquire into the case and, after hearing any witnesses who may be produced against or on behalf of the officer, employee, shareholder or agent of the person to whom this Regulation applies and any statement which may be offered in defence, make any order or direction as it thinks fit including a direction to the person concerned to attend or re-attend before the authorised officer or produce particular books or documents or answer a particular question put to him by the authorised officer, or a direction that the person concerned need not produce a particular book or document or answer a particular question put to him by the authorised officer.

Appointment of inspector by Court

77. (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 the proper and orderly regulation and supervision of investment firms or regulated markets or the protection of investors that an investigation should be held into the affairs of an investment firm or regulated market, the Bank may apply to the Court and the Court, as it thinks proper, may appoint one or more inspectors to investigate the affairs of that investment firm or regulated market and, where necessary, any subsidiary or other associated or related undertaking and to report thereon in such manner as the Court directs.

(2) Before applying to the Court to appoint an inspector under this Regulation, the Bank may, if it is of the opinion that it would not be prejudicial to the interests of shareholders or creditors or investors, notify the investment firm or regulated market concerned in writing of the action which it proposes to take and of the grounds on which it proposes to take it and, in such a case, the investment firm or regulated market shall, within such period as the Bank may set out in the notification, be entitled to give to the Bank a statement in writing explaining its activities.

Power of inspector to extend investigation

78. Where an inspector appointed under Regulation 77 of these Regulations to investigate the affairs of an investment firm or regulated market or any subsidiary or other associated or related undertaking thinks it necessary for the purposes of his investigation to investigate the affairs of any other investment firm or regulated market or any body corporate or any undertaking which is or was at any relevant time a subsidiary or an associated undertaking or related undertaking of the first-mentioned investment firm or regulated market, he shall, with the approval of the Court, have power to do so, and shall report on the affairs of the other investment firm or regulated market or body corporate or undertaking or associated undertaking or related undertaking so far as he thinks the results of his investigation are relevant to the investigation of the affairs of the first-mentioned investment firm or regulated market.

Direction to inspector by Court

79. Where the Court appoints an inspector under Regulation 77 of these Regulations, it 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

80. (1) It shall be 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 under Regulation 77 or 84 of these Regulations, including officers, shareholders and agents outside the State, and
- (b) of any other person, including those being investigated under Regulation 78 of these Regulations, 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 or regulated market,

to produce to an inspector appointed under Regulation 77 or 84 of these Regulations all books, accounts, deeds, records or other documents of, or relating to, the business of the investment firm or regulated market or person being investigated under Regulation 78 of these Regulations, which are in their control, possession or procurement, to attend before the inspector, when required to do so, and, otherwise, to give to him all assistance in connection with the investigation which they are reasonably able to give and it shall be the duty of such persons to comply with the requirement.

(2) The inspector may examine on oath or by written interrogatories on oath the officers, employees, shareholders and agents of the investment firm or regulated market being investigated or other person being investigated by the inspector and any such person as is mentioned in paragraph (1) of this Regulation 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 regulated market or of any other person mentioned in paragraph (1) of this Regulation 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 or regulated market or relating to client money or investment 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 or regulated market or its shareholders or any client or creditor of the investment firm or regulated market,

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) of this Regulation to produce to him all documents in the director's or employee's or agent's possession, or under his 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, 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 or regulated market or any such person as is mentioned in paragraph (1) of this Regulation refuses to produce to the inspector any book or document which it is his duty under this Regulation to produce, refuses to attend before the inspector when required to do so, or refuses to answer any question put to him by the inspector with respect to the affairs of the investment firm or regulated market or other person mentioned in paragraph (1) of this Regulation, as the case may be, the inspector may certify the refusal under his hand to the Court and the Court may thereupon inquire into the case and, after hearing any witnesses who may be produced against or on behalf of the officer, shareholder or agent of the investment firm or regulated market or associated or related undertaking or other person mentioned in paragraph (1) of this Regulation and any statement which may be offered in defence make any order or issue a direction as it thinks fit, including a direction to the person concerned to attend or re-attend before the inspector, or may make an order to produce particular books or documents or answer a particular question put to him by the inspector, or may issue a direction that the person concerned need not produce a particular book or document or answer a particular question put to him by the inspector.

(5) In this Regulation any reference to officers or agents shall include past as well as present officers and agents, as the case may be, and "agents", in relation to an investment firm or regulated market or other person mentioned in paragraph (1) of this Regulation, shall include the bankers, accountants, solicitors, auditors and the financial and other advisors of the investment firm or regulated market or other person mentioned in paragraph (1) of this Regulation, whether those persons are or are not officers of the investment firm or regulated market or other body or undertaking.

Expenses of and fees relating to an investigation

81. (1) The expenses of and incidental to an investigation and the fees incurred by an inspector appointed by the Court under Regulation 77 of these Regulations or by the Bank under Regulation 84 of these Regulations 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) of this Regulation, 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, in the same proceedings, be ordered to repay all or part of the expenses and fees referred to in paragraph (1) of this Regulation and interest as appropriate, to the Bank or to any person on whom liability has been imposed by the Court under that paragraph, provided that, in the case of a person to whom paragraph (c) of this paragraph relates, the Court shall not order payment in excess of one-tenth of the amount of the damages awarded or of the value of the property restored and interest as appropriate as the case may be, and any such order shall not be executed until the person concerned has received his damages or the property has been restored, as the case may be.

(3) The report of an inspector may, if he thinks fit, and shall, if the Court so directs, include a recommendation as to the directions, if any, which he thinks appropriate, in the light of his investigation, to be given under paragraph (1) of this Regulation.

Inspectors' reports and proceedings thereon

82. (1) An inspector appointed under Regulation 77 of these Regulations 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 he may at any time in the course of the investigation, without making an interim report, inform the Court of matters coming to his 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 it thinks fit, furnish a copy thereof to the investment firm or regulated market concerned and its auditors, and
- (c) if it 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 or regulated market concerned or a shareholder of any other body dealt with in the report by virtue of Regulation 77 of these Regulations 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 so thinks proper it 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) of this Regulation or from the report as printed and published under paragraph (2) (c) (ii).

Powers of Court following consideration of reports

83. (1) Having considered a report made under Regulation 82 of these Regulations, 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 or regulated market,
 - (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 or regulated market 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 regulated market liable to be wound up or dissolved under these Regulations or subject to an adjudication of bankruptcy, it appears to the Bank from—
- (a) any report made under Regulation 82 as a result of an application by the Bank under Regulation 77, or
 - (b) any report made by inspectors appointed by the Bank under Regulation 84 of these Regulations, 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 or regulated market, the Bank may, unless an investment firm or regulated market is already being wound up or dissolved or subject to an adjudication of bankruptcy, 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 the Bank

84. (1) Without prejudice to its powers under these Regulations, the Bank may, subject to paragraph (2) of this Regulation, appoint one or more inspectors to investigate and report on any or all of the following, namely—
- (a) the affairs and conduct of the business of an authorised investment firm or regulated market or other undertaking which is, or was at the relevant time, an associated or related undertaking of an authorised investment firm or regulated market, or any particular aspect of such business,
 - (b) compliance of the authorised investment firm or regulated market 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 or requirement of these Regulations,
 - (iv) rules or requirements set out or approved by the Bank, with respect to clients' money and investment instruments,
 - (v) any other enactment, and
 - (c) any other matter as the Bank may consider appropriate.
- (2) An appointment under paragraph (1) of this Regulation 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 or regulated markets, 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 his 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 him 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 his investigation.

(5) For the purposes of any investigation under this Regulation, Regulations 78 to 82, except Regulations 79, 80(3) and 81(3), shall apply with the necessary modifications or references to the affairs of the authorised investment firm or regulated market or to those of any other person or any associated or related undertaking, so, however, that—

- (a) the said Regulations shall apply in relation to all persons who are or have been officers or employees or agents of the authorised investment firm or regulated market or other person who appears to the inspector to have the information, document, material or explanation in his possession or under his control, and
- (b) for references to the Court except in Regulations 78, 80(4), 81(1) and 81(2) of these Regulations, there shall be substituted references to the Bank.

Search and seizure

85. (1) If a Judge of the District Court is satisfied on the sworn information of an authorised officer or an inspector appointed under Regulation 84 of these Regulations 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 from 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 six months or—

- (i) 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
- (ii) if within that period there is commenced an investigation by An Gardaí Síochána into matters relating to paragraph (1)(a) of Regulation 88 of these Regulations (and the books or documents are relevant to the investigation), until the conclusion of the investigation.

(3) A person who—

- (a) obstructs or interferes with a member of the Gardaí Síochána acting under the authority of a warrant issued under this Regulation, or
- (b) is found on the premises or at the place specified in the warrant by a member of the Gardaí Síochána acting as aforesaid and who fails or refuses to give the member his name and address when required to do so or gives a name and address that is false or misleading, or

- (c) who obstructs the exercise of an authority conferred by a warrant under this Regulation to take possession of any books or documents,

shall be guilty of an offence.

(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

86. A document purporting to be a copy of a report of an inspector appointed under the provisions of these Regulations shall be admissible in any civil proceedings as evidence—
- (a) of the facts set out therein 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

87. (1) Nothing in these Regulations shall compel the disclosure by any person of any information which he would, in the opinion of the Court, be entitled to refuse to produce on the grounds of legal professional privilege or authorise the taking possession of any document containing such information which is in his 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 shall be privileged.

Consent to publication of information

88. (1) No information, book or document relating to a person which has been obtained under Regulation 85 of these Regulations 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, namely—

- (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 relevant Bank exercises statutory 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 85 of these Regulations.

(2) For the purposes of this Regulation "**appropriate authority**" includes any or all of the following, namely—

- (a) the Bank,
- (b) a person authorised by the Governor of the Bank;
- (c) an inspector appointed under these Regulations,
- (e) the Minister,
- (f) any court of competent jurisdiction,
- (g) any other competent authority for the purposes of the Directive or of Directive 2000/12/EC relating to the taking up and pursuit of the business of credit institutions, or [].

TITLE XIV
ACQUIRING TRANSACTIONS

Definitions for the purposes of Title XIV

89. (1) In this Title, "acquiring transaction" shall be construed in accordance with paragraph (2) of this Regulation and "disposal" shall be construed in accordance with paragraph (3) of this Regulation.

(2) "acquiring transaction" means any direct or indirect acquisition by a person or more than one person acting in concert of shares or other interest in an authorised investment firm or a regulated market:

Provided that after the proposed acquisition—

- (a) the proportion of voting rights or capital held by the person or persons making the acquiring transaction would reach or exceed a qualifying holding, or
- (b) the proportion of voting rights or capital held by the person or persons making the acquiring transaction would reach or exceed 20 per cent., 33 per cent. or 50 per cent., or
- (c) an authorised investment firm or a regulated market would become a subsidiary of the acquirer.

(3) "disposal" means any direct or indirect disposal by a person or more than one person acting in concert of a qualifying holding or a disposal which would reduce such a qualifying holding so that the proportion of the voting rights or of the capital held by the person or persons would fall below 20 per cent., 33 per cent. or 50 per cent. or so that an authorised investment firm or a regulated market would cease to be its subsidiary.

Notification of certain transactions

90. (1) Any person who proposes to make an acquiring transaction shall notify the Bank in writing of the proposal as soon as may be and shall include with the notification such information concerning the proposed acquiring transaction as may be specified by the Bank from time to time.

(2) Any person who proposes to make a disposal shall notify the Bank in writing of the proposal as soon as may be and such notification shall include such information concerning the proposed disposal as may be specified by a supervisory authority from time to time.

(3) On becoming aware of any proposals of the type referred to in paragraphs (1) or (2) of this Regulation, the authorised investment firm or regulated market concerned shall inform the Bank of such proposed acquiring transactions or disposals that cause holdings to exceed or fall below a qualifying holding or 20 per cent., 33 per cent. or 50 per cent. of the capital held or voting rights, or that cause an authorised investment firm to become, or cease to be, a subsidiary.

(4) Where, having received a notification under this Regulation, the Bank is of the opinion that in order to consider, for the purposes of this Regulation, a proposed acquiring transaction it requires further information it may, within one month of the date of receipt by it of a notification, request such further information in writing from any one or more of the persons concerned with the transaction.

(5) The Bank may approve of, or approve of subject to conditions or requirements or both, or may refuse to approve of an acquiring transaction.

(6) If the acquirer of any holding in an investment firm or regulated market referred is itself an investment firm, a credit institution, an insurance undertaking or a UCITS management company authorised in another Member State, or the parent undertaking of an investment firm, credit institution, insurance undertaking or a UCITS management company authorised in another Member State, or a person controlling an investment firm, credit institution, insurance undertaking or a UCITS management company authorised in another Member State, and if, as a result of that acquisition, the undertaking would become the acquirer's subsidiary or come under his control, the assessment of the acquisition by the Bank shall be subject to the prior consultation provided for in Article 60.

Approval of acquiring transactions

91. An acquiring transaction shall not proceed until the Bank has informed the authorised investment firm and the party making the acquiring transaction in writing that it approves of the acquiring transaction or until three months have elapsed during which the Bank has not refused to approve of the acquiring transaction, whichever first occurs, such period beginning on the date on which the Bank first receives a notification under Regulation 90 or, where the Bank requests further information from the person or persons concerned under Regulation 90(4), the date of receipt by the Bank of such information.

Period for implementing acquiring transactions

92. Where the Bank approves of an acquiring transaction, it may specify in writing a period for the implementation of that transaction.

Imposition of conditions or requirements in respect of proposed acquiring transactions

93. (1) An approval given by the Bank to a proposed acquiring transaction shall be subject to such conditions or requirements or both as the Bank may impose (being conditions or requirements which in the opinion of the Bank are necessary for the proper and orderly regulation and supervision of investment firms).
- (2) The Bank may, at any time, amend or revoke conditions or requirements or both referred to in paragraph (1) of this Regulation.

Limitation on validity of certain acquiring transactions

94. Subject to Regulation 92, an acquiring transaction shall only be valid if it is entered into within—
- (a) 12 months of the Bank giving its approval in writing to the transaction, or
 - (b) 12 months of the end of the three month period referred to in Regulation,

and, accordingly, any purported acquiring transaction which does not comply with either paragraph (a) or (b) of this Regulation shall be invalid and—

- (i) titles to any shares or other interest shall not pass, and
- (ii) any consequential purported exercise of powers relating to such shares or other interest shall be invalid.

Refusal to approve acquiring transactions

95. (1) The Bank shall refuse to approve an acquiring transaction where it is not satisfied as to the suitability of the person proposing to make the acquiring transaction or where the Bank considers that the acquiring transaction is likely to be prejudicial to the sound and prudent management or the proper and orderly regulation and supervision of an authorised investment firm or a regulated market as the case may be.

(2) Where the Bank refuses to approve an acquiring transaction or where the Bank becomes aware of a proposed acquiring transaction of which it has not been notified under Regulation 90, the Bank may issue a direction under Regulation 68 of these Regulations to the directors and those responsible for the management of the authorised investment firm or regulated market concerned.

Appeals to Court

96. (1) Where the Bank informs a person making an acquiring transaction in accordance with Regulation 90 that it—

- (a) refuses to give its approval to that transaction, or
- (b) gives its approval subject to conditions or requirements,

an appeal may be made by that person to the Court²⁰ against the refusal or the conditions or requirements attached to the approval, as the case may be, within one month of that refusal or approval being so communicated.

(2) Where the Court allows the appeal it shall direct the Bank to make a decision in accordance with the determination of the Court and the Bank shall

²⁰ Appeal to court or appealable decision under Part VIIA?

make its decision within the period of three months beginning on the date of the determination of the Court.

(3) 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 it may decide that the whole or any part of proceedings under this section may be heard otherwise than in public.

Inquiries into certain acquiring transactions

97. (1) The Bank may carry out such inquiries and obtain such information as it considers necessary to enable it to consider a proposed acquiring transaction.

(2) Any person who wilfully or knowingly obstructs or prevents inquiries by the Bank under this section or knowingly or recklessly provides false or misleading information shall be guilty of an offence.

Obligation to inform a supervisory authority of shareholdings

98. (1) At least once in each year, authorised investment firms and regulated markets shall inform the Bank of the names of direct shareholders and persons possessing qualifying holdings and the sizes of such holdings.

(2) At least once in each year, authorised investment firms and regulated markets, having made best efforts to ascertain the identity of all indirect shareholders and persons possessing qualifying holdings, shall inform the Bank of the names of such persons.

Contravention of terms of approval of acquiring transactions

99. (1) Nothing in any enactment shall be construed as relieving an authorised investment firm, a regulated market or other person of any of its obligations to comply with the provisions of paragraphs (1), (2) or (3) of Regulation 90.

(2) An order under section 201 of the Companies Act, 1963, in respect of a proposed amalgamation (being an acquiring transaction) shall not be made until the Bank has given its approval to the acquiring transaction or the period

(within which an acquiring transaction may not proceed) referred to in Regulation 91 has elapsed without the Bank having given or refused to give approval.

(3) The Bank may, having regard to the proper and orderly regulation and supervision of investment firms and regulated markets, the protection of investors and the requirements of the Directive, following consultation with the Minister, specify a class or classes of authorised investment firms or regulated markets who do not have to comply with the provisions of Title XIV.

TITLE XV

OFFENCES AND PENALTIES

Offences generally and application of *section []* of [Markets in Financial Instruments Act]

100. (1) A person who contravenes -

- (a) any provision of Regulation 7,
- (b) any provision of Regulations [] (except Regulation []),
- (c) a requirement under any provision of Regulation [],

is guilty of an offence and liable on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both.

(2) Each offence under paragraph (1) consisting of a contravention of any provision of Regulation [] or [] is an offence to which section [] of the [Market in Financial Instruments Act, 2007] applies.

(3) Where the contravention in respect of which a person is convicted of an offence under these Regulations is continued after the conviction, the person shall be guilty of a further offence on every day on which the contravention continues and liable on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both for each such further offence.

Obstruction, etc. of authorised officer

101. A person who -

- (a) obstructs an authorised officer (within the meaning of Regulation 75) in the exercise of the powers of an authorised officer under Title XIII,

(b) without reasonable excuse, fails to comply with a request or requirement made by such an officer under Title XIII, or

(c) gives such an officer information that the person knows or ought reasonably to know is false or misleading in a material particular,

is guilty of an offence and liable upon summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both.

False, etc. information

102. A person who gives the Bank information pursuant to any requirement of, or pursuant to, the Regulations, or in support of any application for authorisation, approval or permission from the Bank under these Regulations, that the person knows is false or misleading in a material particular or that the person does not believe to be true is guilty of an offence and liable upon summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both.

Offences by bodies corporate, etc.

103. (1) 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 or to have been attributable to the wilful neglect on the part of any person, being a director, manager, secretary or other officer of the body corporate or a person who was purporting to act in any such capacity, that person as well as the body corporate is guilty of an offence and is liable to be proceeded against and punished as if that person were guilty of the first-mentioned offence.

(2) 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.

Summary proceedings may be brought by Bank

104. Summary proceedings for an offence under these Regulations may be brought and prosecuted by the Bank.

TITLE XVI

APPEALS AND MISCELLANEOUS

Rights of appeal against Bank decisions

105. The following decisions of the Bank are appealable decisions for the purposes of Part VIIA of the Central Bank Act 1942²¹:
- (a) a decision of the Bank under Regulation [] or [] refusing an application for an authorisation of an investment firm, or an application for authorisation of a regulated market;
 - (b) a decision of the Bank under Regulation [] or [] withdrawing or revoking an authorisation;
 - (c) a direction given under Regulation [] or [];
 - (d) a condition or requirement imposed under Regulation [].

Exemption from liability for damages

106. (1) This section applies to the following persons:
- (a) the Bank;
 - (b) employees and officers of the Bank;
 - (c) the members of the board of the Bank;
 - (d) any member, employee or officer of any entity carrying out any functions of the Bank under these Regulations.
- (2) A person to whom this Regulation applies is not liable in damages for anything done or omitted to be done in performing its functions under these Regulations unless it is proved shown that the act was done or omitted in bad faith.

²¹ The Financial Regulator suggests that the status quo regarding appealable decisions be maintained so that the IIA decisions that are appealable are referred to here.

(3) Without prejudice to the generality of paragraph (1) of this Regulation, the authorisation, supervision, regulation or revocation of authorisation of an investment firm or regulated market under these Regulations shall not constitute a warranty as to the solvency or performance of an investment firm or regulated market and neither the State nor the Bank nor any entity carrying out any functions of the Bank under these Regulations shall be liable in respect of any loss or losses incurred through the insolvency, default or performance of the investment firm.

Repeals

107. The Stock Exchange Act 1995 is hereby repealed.

SCHEDULE ONE

Definition of professional client

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 must comply with the following criteria:

Categories of client who are considered to be professionals

The following should all be regarded as professionals in all investment services and financial instruments for the purposes of these Regulations.

(1) Entities which are required to be authorised or regulated to operate in the financial markets. The list below should be understood as including all authorised entities carrying out the characteristic activities of the entities mentioned: entities authorised by a Member State under a directive, entities authorised or regulated by a Member State without reference to a directive, and entities authorised or regulated by a non-Member State:

- (a) Credit institutions
- (b) Investment firms
- (c) Other authorised or regulated financial institutions
- (d) Insurance companies
- (e) Collective investment schemes and management companies of such schemes
- (f) Pension funds and management companies of such funds
- (g) Commodity and commodity derivatives dealers
- (h) Locals

(i) Other institutional investors

(2) Large undertakings meeting two of the following size requirements on a company basis:

- balance sheet total: EUR 20 000 000
- net turnover; EUR 40 000 000
- own funds; EUR 2 000 000

(3) National and regional governments, public bodies that manage public debt, Central Banks, international and supranational institutions such as the World Bank, the IMF, the ECB, the EIB and other similar international organisations.

(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.

The entities mentioned above 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 prior to 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 he 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 it deems it is unable to properly assess or manage the risks involved.

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 it shall not be treated as a professional for the purposes of the applicable conduct of business regime. Such agreement should specify whether this 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

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

(7) Investment firms should therefore be allowed to treat any of the above clients as professionals provided the relevant criteria and procedure mentioned below are fulfilled. These clients should not, however, be presumed to possess market knowledge and experience comparable to that of the categories listed in paragraphs (1) – (4).

(8) Any such waiver of the protection afforded by the standard conduct of business regime shall be considered 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 his own investment decisions and understanding the risks involved. In the case of small entities, the person subject to the above assessment should be the person authorised to carry out transactions on behalf of the entity.

(9) A client who is to be treated as a professional client for the purpose of these Regulations must satisfy at least two of the following criteria:

(i) 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,(ii) the size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments, exceeds EUR 500 000,

(iii) 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.

(10) The clients defined above may waive the benefit of the detailed rules of conduct only where the following procedure is followed:

(i) they must 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,

(ii) the investment firm must give them a clear written warning of the protections and investor compensation rights they may lose,

(iii) they must state in writing, in a separate document from the contract, that they are aware of the consequences of losing such protections.

(11) Before deciding to accept any request for waiver, investment firms must be required to take all reasonable steps to ensure that the client requesting to be treated as a professional client meets the relevant requirements stated in paragraph (9) of this Schedule.

(12) If, prior to the coming into force of these Regulations, clients have already been categorised as professionals under parameters and procedures similar to those set out in paragraphs (9) and 10 above, that categorisation may satisfy the requirements of this Schedule.

(13) Investment firms must implement appropriate written internal policies and procedures to categorise clients. Professional clients are responsible for keeping the firm informed about any change, which could affect their current categorisation. Should the investment firm become aware however that the client no longer fulfils the initial conditions, which made him eligible for a professional treatment, the investment firm must take appropriate action.

SCHEDULE TWO

Implementing measures

[Text of Implementing Directive]