

**FINANCIAL SERVICES (MARKETS IN FINANCIAL INSTRUMENTS) ACT 2018****Principal Act**

<b>Act. No. 2006-32</b>	<i>Commencement</i>	1.11.2007
	<i>Assent</i>	14.12.2006

Amending enactments	Relevant current provisions	Commencement date
LN. 2010/007	ss. 2(1) & (3), 10(5) to (9), 10A & 10B	15.1.2010
2012/173	ss. 2, 6(9), 8(1) & (2), 15(1), 23(5)(b), 25(1), (3) & (3A), 27(4) & (4A), 31(3A), 36(8) & (8)(e), 41(3) & (4), 42(7A), 47, 48(1)(b) & (7), 59(3) & (4), 54(1A), (4) & (5), 56(a) & (b)	22.11.2012
LN. 2017/135	Long Title, ss. 1 – 120, Sch.1 & 2	3.1.2018

**English sources:**

None cited

**Transposing:**

Directive 85/611/EEC	Directive 2004/39/EC
Directive 92/49/EEC	Directive 2004/109/EC
Directive 93/6/EEC	Directive 2005/60/EC
Directive 93/22/EEC	Directive 2005/68/EC
Directives 98/26/EC	Directive 2006/48/EC
Directive 2000/12/EC	Directive 2006/49/EC
Directive 2002/83/EC	Directive 2007/44/EC
Directive 2002/87/EC	Directive 2009/65/EC
Directive 2003/6/EC	Directive 2010/78/EU
Directive 2003/41/EC	Directive 2014/65/EU
Directive 2003/71/EC	

**EU Legislation/International Agreements involved:**

**ARRANGEMENT OF SECTIONS**

Section

**PART 1  
PRELIMINARY**

1. Title and commencement.
2. Interpretation.
3. Scope.
4. Exemptions.
5. Exempt local firms.

**PART 2  
AUTHORISATION AND OPERATING CONDITIONS FOR  
INVESTMENT FIRMS***Conditions and procedures for authorisation*

6. Requirement for authorization.
7. Scope of authorization.
8. Grant or refusal of authorisation: procedure.
9. Initial capital endowment.
10. Membership of investor compensation scheme.
11. Management body.
12. Shareholders and members with qualifying holdings.
13. Withdrawal of authorization.

*Proposed acquisitions*

14. Notification of proposed acquisitions.
15. Assessment period.
16. Assessment.

*Organisational and product governance requirements*

17. Organisational requirements.
18. Product governance: firms manufacturing financial instruments.
19. Product governance obligations for distributors.
20. Telephone and other records.

*Safeguarding of client financial instruments and funds*

21. Safeguarding of client financial instruments and funds.
22. Depositing client financial instruments.
23. Depositing client funds.
24. Use of client financial instruments.
25. Inappropriate use of title transfer collateral arrangements.

26. Governance arrangements concerning the safeguarding of client assets.
27. Reports by external auditors.
28. Algorithmic trading.
29. Trading process and transaction finalisation in an MTF and OTF.
30. Specific requirements for MTFs.
31. Specific requirements for OTFs.

*Operating conditions for investment firms: general provisions*

32. Regular review of conditions for initial authorization.
33. General obligation in respect of on-going supervision.
34. Conflicts of interest.

*Investor protection: general principles*

35. General principles and information to clients.

*Inducements*

36. Inducements.
37. Inducements: advice on an independent basis or portfolio management.
38. Inducements in relation to research.

*Provisions to ensure investor protection*

39. Assessing suitability and appropriateness and reporting to clients.
40. Provision of services through another investment firm.
41. Obligation to execute orders on terms most favourable to the client.
42. Client order handling rules.

*Tied agents*

43. Obligations of investment firms when appointing tied agents.
44. Register of tied agents.
45. Revocation of registration.

*Transactions with eligible counterparties*

46. Transactions executed with eligible counterparties.

*Market transparency and integrity*

47. Monitoring compliance with MTF and OTF rules etc.
48. Suspension and removal of financial instruments from trading on an MTF or OTF.

*SME growth markets*

49. SME growth markets.

*Rights of investment firms*

50. EEA firms providing services in Gibraltar.  
51. EEA firms establishing branches in Gibraltar.  
52. Gibraltar firms providing services in other EEA States.  
53. Gibraltar firms establishing branches in other EEA States.  
54. Access to regulated markets.  
55. Access to CCP, clearing and settlement facilities and right to designate settlement system.  
56. Central counterparty, clearing and settlement arrangements for MTFs.

*Provision of investment services and activities by third-country firms through the establishment of a branch*

57. Third-country firm to establish branch.  
58. Grant of authorization.  
59. Services provided at the client's exclusive initiative.  
60. Withdrawal of authorization.

**PART 3  
REGULATED MARKETS**

61. Authorisation and applicable law.  
62. Requirements for the management body of a market operator.  
63. Requirements relating to persons exercising significant influence over the management of the regulated market.  
64. Organisational requirements.  
65. Systems resilience, circuit breakers and electronic trading.  
66. Tick sizes.  
67. Synchronisation of business clocks.  
68. Admission of financial instruments to trading.  
69. Suspension and removal of financial instruments from trading on a regulated market.  
70. Access to a regulated market.  
71. Monitoring compliance with regulated market rules and other legal obligations.  
72. Provisions regarding CCP and clearing and settlement arrangements.  
73. List of regulated markets.

**PART 4**

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

74. Position limits and position management controls in commodity derivatives.
75. Position reporting by categories of position holders.

**PART 5  
DATA REPORTING SERVICES**

*Authorisation procedures for data reporting services providers*

76. Requirement for authorization.
77. Scope of authorization.
78. Procedures for granting and refusing requests for authorization.
79. Withdrawal of authorisations.
80. Requirements for the management body of a data reporting services provider.

*Conditions for APAs*

81. APA organisational requirements.

*Conditions for CTPs*

82. CTP organisational requirements.

*Conditions for ARMs*

83. ARM organisational requirements.

**PART 6  
COMPETENT AUTHORITY**

*Designation, powers and redress procedures*

84. Designation of competent authority.
85. Supervisory powers.
86. Sanctions for specified infringements.
87. Publication of infringement.
88. Cease and desist order.
89. Suspension or withdrawal of authorization.
90. Prohibition order.
91. Suspension from market participation.
92. Civil penalties.
93. Other infringements.
94. Exercise of powers to impose sanctions.

- 95. Warning notices.
- 96. Decision notices.
- 97. Publication of decisions.
- 98. Reporting of infringements.
- 99. Appeals.
- 100. Consumer complaints.
- 101. Civil proceedings for loss.
- 102. Professional secrecy.
- 103. Relations with auditors.
- 104. Data protection.

*Cooperation between the competent authorities of the  
EEA States and with ESMA*

- 105. Obligation to cooperate.
- 106. Cooperation between competent authorities.
- 107. Exchange of information.
- 108. Binding mediation.
- 109. Refusal to cooperate.
- 110. Consultation prior to authorization.
- 111. Powers as host State.
- 112. Precautionary measures as host State.
- 113. Cooperation and exchange of information with ESMA.

*Cooperation with third countries*

- 114. Exchange of information with third countries.

**PART 7  
REGULATION (EU) No 600/2014**

- 115. Application of MiFIR

**PART 8  
FINAL PROVISIONS**

- 116. Transitional provisions.
- 117. Transitional exemption for certain C6 energy derivative contracts.
- 118. References to previous Act and Directives.
- 119. Regulations.
- 120. Codes of practice.

**SCHEDULE 1  
LISTS OF SERVICES AND ACTIVITIES  
AND FINANCIAL INSTRUMENTS**

**SCHEDULE 2  
PROFESSIONAL CLIENTS**

AN ACT TO TRANSPOSE DIRECTIVE 2014/65/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 15 MAY 2014 ON MARKETS IN FINANCIAL INSTRUMENTS AND AMENDING DIRECTIVE 2002/92/EC AND DIRECTIVE 2011/61/EU (RECAST), AS AMENDED BY DIRECTIVE (EU) 2016/1034 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 23 JUNE 2016, TO IMPLEMENT REGULATION (EU) NO 600/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 15 MAY 2014 ON MARKETS IN FINANCIAL INSTRUMENTS AND AMENDING REGULATION (EU) NO 648/2012 AND TO TRANSPOSE COMMISSION DELEGATED DIRECTIVE (EU) 2017/593 OF 7 APRIL 2016 SUPPLEMENTING DIRECTIVE 2014/65/EU WITH REGARD TO SAFEGUARDING OF FINANCIAL INSTRUMENTS AND FUNDS BELONGING TO CLIENTS, PRODUCT GOVERNANCE OBLIGATIONS AND THE RULES APPLICABLE TO THE PROVISION OR RECEPTION OF FEES, COMMISSIONS OR ANY MONETARY OR NON-MONETARY BENEFITS, AND FOR CONNECTED PURPOSES.

## PART 1 PRELIMINARY

### **Title and commencement.**

1.(1) This Act may be cited as the Financial Services (Markets in Financial Instruments) Act 2018.

(2) Subject to subsection (3), this Act comes into operation on 3rd January 2018.

(3) Sections 85(4) and (5) come into operation on 3rd September 2019.

### **Interpretation.**

2.(1) In this Act—

“the Accounting Directive” means Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC;

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

“algorithmic trading” means trading in financial instruments where a computer algorithm, with limited or no human intervention, automatically determines individual parameters of orders such as whether to initiate the order, the timing, price or quantity of the order or how to manage the order after its submission, but does not include any system that is only used for–

- (a) routing orders to one or more trading venues;
- (b) processing orders without determining any trading parameters;
- (c) confirming orders; or
- (d) the post-trade processing of executed transactions;

“ancillary services” means any of the services listed in Section B of Schedule 1;

“APA” (approved publication arrangement) means a person authorised under Part 5 to provide the service of publishing trade reports on behalf of investment firms pursuant to Articles 20 and 21 of MiFIR;

“ARM” (approved reporting mechanism) means a person authorised under Part 5 to provide the service of reporting details of transactions to competent authorities or to ESMA on behalf of investment firms;

“branch” means a place of business which–

- (a) is a part of an investment firm (other than its head office);
- (b) has no legal personality; and
- (c) provides investment services or performs investment activities and any ancillary services for which the investment firm is authorised;

and for this purpose, all of the places of business set up in the same EEA State by an investment firm with headquarters in another EEA State are to be regarded as a single branch;

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



“Capital Requirements Directive” means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC;

“Capital Requirements Regulation” means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012;

“CCP” (central counterparty) has the meaning given in Regulation (EU) No 648/2012;

“certificates” has the meaning given in MiFIR;

“client” means an individual or legal person to whom an investment firm provides investment or ancillary services;

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

- (a) by participation in the ownership or control of 20% or more of the voting rights or capital of an undertaking;
- (b) by a control relationship, being—
  - (i) a relationship between a parent undertaking and a subsidiary, in any of the cases referred to in Article 22(1) and (2) of the Accounting Directive; or
  - (ii) a similar relationship between any person and an undertaking;

and for this purpose a subsidiary undertaking of a subsidiary undertaking is also to be considered to be a subsidiary of the parent undertaking which is at the head of those undertakings; or

- (c) permanently to one and the same person by a control relationship;

“commodity derivatives” has the meaning given in MiFIR;

“competent authority” means—

- (a) in Gibraltar, the FSC; and
- (b) in an EEA State, an authority designated in that State under Article 67 of MiFID;

“credit institution” has the meaning given in the Capital Requirements Regulation;

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

“CSD” (central securities depository) means a central securities depository within the meaning of Regulation (EU) No 909/2014 of the European Parliament and of the Council;

“CTP” (consolidated tape provider) means a person authorised under Part 5 to provide the service of collecting trade reports for financial instruments listed in Articles 6, 7, 10, 12, 13, 20 and 21 of MiFIR from regulated markets, MTFs, OTFs and APAs and consolidating them into a continuous electronic live data stream providing price and volume data per financial instrument;

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

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

“decision notice” means a decision notice issued in accordance with section 96;

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

“derivatives” has the meaning given in MiFIR;

“direct electronic access” means an arrangement where a member, participant or client of a trading venue permits a person to use its trading code so the person can electronically transmit orders relating to a financial instrument directly to the trading venue and includes—

- (a) arrangements which involve the use by a person of the infrastructure of the member, participant or client, or any connecting system provided by the member, participant or client, to transmit the orders (direct market access); and

- (b) arrangements where such an infrastructure is not used by a person (sponsored access);

“durable medium” means any instrument which–

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

“EEA State” means a Member State of the European Economic Area listed in Schedule 3 to the European Communities Act and, where the context requires, includes Gibraltar;

“ESMA” means the European Securities and Markets Authority established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council;

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

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

“exempt local firm” has the meaning given in section 5(2);

“financial instrument” means those instruments specified in Section C of Schedule 1;

“the FSC” means the Financial Services Commission established under section 3 of the Financial Services Commission Act 2007;

“group” has the meaning given in the Accounting Directive;

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

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

“home State” means–

- (a) in the case of an investment firm–
  - (i) which is an individual, the EEA State in which its head office is situated;
  - (ii) which is a legal person, the EEA State in which its registered office is situated; or
  - (iii) which under its national law has no registered office, the EEA State in which its head office is situated;
- (b) in the case of a regulated market–
  - (i) the EEA State in which the regulated market is registered; or
  - (ii) which under its national law has no registered office, the EEA State in which the head office of the regulated market is situated; and
- (c) in the case of an APA, CTP or ARM–
  - (i) which is an individual, the EEA State in which its head office is situated;
  - (ii) which is a legal person, the EEA State in which its registered office is situated;

- (iii) which under its national law has no registered office, the EEA State in which its head office is situated;

“host State” means the EEA State, other than the home State, in which–

- (a) an investment firm has a branch or provides investment services or investment activities; or
- (b) a regulated market provides appropriate arrangements to facilitate access to trading on its system by remote members or participants established in that State;

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

“investment firm” means–

- (a) a legal person; or
- (b) any other person who meets the requirements of regulations made under subsection (2);

whose regular occupation or business is the provision of one or more investment services to third parties or the performance of one or more investment activities on a professional basis;

“investment services and activities” means any of the services and activities listed in Section A of Schedule 1 relating to any of the instruments listed in Section C of that Schedule;

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

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

- (a) the average frequency and size of transactions over a range of market conditions, having regard to the nature and life cycle of products within the class of financial instrument;

- (b) the number and type of market participants, including the ratio of market participants to traded instruments in a particular product;
- (c) the average size of spreads, where available;

“management body” means the board of directors, committee of management or other body of an investment firm, market operator or data reporting services provider which is empowered to set the entity’s strategy, objectives and overall direction, and which oversee and monitor management decision-making and includes persons who effectively direct the business of the entity;

“the Market Abuse Regulation” means Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC;

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

“market operator” means a person who manages or operates the business of a regulated market and may be the regulated market itself;

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

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

“MiFIR” has the meaning given in section 115;

“the Minister” means the Minister with responsibility for financial services;

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

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

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

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

“parent undertaking” means a parent undertaking within the meaning of Article 22 of the Accounting Directive;

“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 2;

“qualifying holding” means a direct or indirect holding in an investment firm–

- (a) which represents 10% or more of the capital or voting rights, as set out in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council, taking account of the aggregation conditions in Article 12(4) and (5) of that Directive, or
- (b) which makes it possible to exercise a significant influence over the management of the investment firm in which that holding subsists;

“qualifying money market fund” means a collective investment undertaking authorised under the UCITS Directive, or which is

subject to supervision and, if applicable, authorised by an authority under the law of the authorising EEA State, and which satisfies all of the following conditions–

- (a) its primary investment objective must be to maintain the net asset value of the undertaking either constant at par (net of earnings), or at the value of the investors' initial capital plus earnings;
- (b) it must, with a view to achieving that primary investment objective, invest exclusively in high quality money market instruments with a maturity or residual maturity of no more than 397 days, or regular yield adjustments consistent with such a maturity, and with a weighted average maturity of 60 days (and may also achieve this objective by investing on an ancillary basis in deposits with credit institutions); and
- (c) it must provide liquidity through same day or next day settlement;

and, for the purposes of paragraph (b), a money market instrument is to be considered to be of high quality if the management/investment company performs its own documented assessment of the credit quality of money market instruments that allows it to consider a money market instrument as high quality (and where one or more credit rating agencies registered and supervised by ESMA have provided a rating of the instrument, the management/investment company's internal assessment should have regard to, among other things, those credit ratings);

“regulated market” means a multilateral system operated 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 or systems, and which is authorised and functions regularly–

- (a) in Gibraltar, in accordance with Part 3; or
- (b) in an EEA State, in accordance with Title III of MiFID;

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

“securities financing transaction” has the meaning given in Regulation (EU) 2015/2365 of the European Parliament and of the Council on transparency of securities financing transactions and of reuse;



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

“SME growth market” means a MTF that is registered as an SME growth market in accordance with section 49;

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

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

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

“specified infringement” has the meaning given in section 86(3);

“structured deposit” means a deposit (within the meaning of Directive 2014/49/EU) which is fully repayable at maturity on terms under which interest or a premium will be paid or is at risk, according to a formula involving factors such as–

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

- (d) a foreign exchange rate or combination of foreign exchange rates;

“structured finance products” has the meaning given in MiFIR;

“subsidiary” means a subsidiary undertaking within the meaning of Article 22 of the Accounting Directive;

“systematic internaliser” means an investment firm which, on an organised, substantial, frequent and systematic basis, deals on own account when executing client orders outside a regulated market, an MTF or OTF without operating a multilateral system and, for this purpose—

- (a) the frequent and systematic basis is to be measured by the number of OTC trades in the financial instrument carried out by the investment firm on own account when executing client orders;
- (b) the substantial basis is to be measured by the size of the OTC trading carried out by the investment firm either in relation to—
  - (i) the total trading of the investment firm in a specific financial instrument; or
  - (ii) the total trading in the EEA in a specific financial instrument; and
- (c) the definition of a systematic internaliser only applies where—
  - (i) the pre-set limits for a frequent and systematic basis and a substantial basis are both crossed; or
  - (ii) an investment firm chooses to opt-in under the systematic internaliser regime;

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

“tied agent” means a person who, under the full and unconditional responsibility of only one investment firm on whose behalf it acts—

- (a) promotes investment or ancillary services to clients or prospective clients;

- (b) receives and transmits instructions or orders from the client in respect of investment services or financial instruments; or
- (c) places financial instruments or provides advice to clients or prospective clients in respect of those financial instruments or services;

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

“transferable securities” means those classes of securities which are negotiable on the capital market, other than 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 Directive” means Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS);

“UCITS management company” means a management company within the meaning of the UCITS Directive;

“warning notice” means a warning notice issued in accordance with section 95; and

“wholesale energy product” has the meaning given in Regulation (EU) No 1227/2011.

(2) An undertaking which is not a legal person only falls within the definition of “investment firm” where it meets requirements imposed by regulations made by the Minister which provide for–

- (a) the undertaking's legal status to ensure a level of protection for third parties interests which is equivalent to that afforded by investment firms which are legal persons;
- (b) the undertaking to be subject to prudential supervision which is equivalent to that which applies to other investment firms but in a manner which is appropriate to its legal form; and
- (c) where the undertaking is an individual providing services involving the holding of third party funds or transferable securities (and without limiting MiFIR, the Capital Requirements Directive or the other provisions of this Act)—
  - (i) the ownership rights of third parties in instruments and funds to be safeguarded, especially in the event of the insolvency of the individual, seizure, set-off or any other action by creditors of the individual;
  - (ii) the individual to be subject to rules designed to monitor the individual's solvency;
  - (iii) the individual's annual accounts to be audited by one or more persons empowered under Gibraltar law to audit accounts; and
  - (iv) where the individual is a sole practitioner, for that individual to make provision for the protection of investors in the event of the cessation of business following the individual's death, incapacity or any similar event.

**Scope.**

3.(1) This Act applies to—

- (a) investment firms;
- (b) market operators;
- (c) data reporting services providers; and
- (d) third-country firms providing investment services or performing investment activities through the establishment of a branch in Gibraltar.

(2) This Act sets requirements in relation to—

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

(3) The following provisions also apply to credit institutions authorised under the Capital Requirements Directive, when providing investment services or performing investment activities–

- (a) sections 4(8), 11(5) to (8), 10, 17 to 31;
- (b) sections 32 to 49;
- (c) sections 50 to 56 other than section 50(3), (5) and (6), 51(20 to (4) and (8), 52(3) (5) and (6) and 53(2) to (5) and (7);
- (d) sections 84 to 101, 106, 111 and 112.

(4) The following provisions also apply to investment firms and to credit institutions authorised under the Capital Requirements Directive when selling or advising clients in relation to structured deposits–

- (a) sections 11(5) to (8), 10, 17(2) to (9), 18, 19 and 20(1);
- (b) sections 21 to 27, 34 to 40, 42, 43 and 46; and
- (c) sections 84 to 101.

(5) Section 28 also applies to members or participants of regulated markets and MTFs who under sections 4(1)(a), (d), (h) or (2) are not required to be authorised under this Act.

(6) Sections 74 and 75 also apply to persons exempt under section 4.

(7) A multilateral system in financial instruments must operate in accordance with either the provisions of–

- (a) Part 2 concerning MTFs or OTFs; or

(b) Part 3 concerning regulated markets.

(8) An investment firm which, on an organised, frequent, systematic and substantial basis, deals on own account when executing client orders outside a regulated market, MTF or OTF must operate in accordance with Title III of MiFIR.

(9) Without limiting Articles 23 and 28 of MiFIR, any transactions in financial instruments referred to in subsections (7) or (8) which are not concluded on multilateral systems or systematic internalisers must comply with the relevant provisions of Title III of MiFIR.

(10) The provisions of sections 18, 19, 21 to 27 and 36 to 38 also apply to—

- (a) management companies providing services in accordance with regulation 4(3) of the Financial Services (Collective Investment Schemes) Regulations 2011; and
- (b) alternative investment fund managers providing services in accordance with regulation 12(5) of the Financial Services (Alternative Investment Fund Managers) Regulations 2013.

(11) For the purposes of subsections (3) and (4), the sections referred to in subsection (10) are to apply as if a reference in those sections to—

- (a) investment firms includes credit institutions; and
- (b) financial instruments includes structured deposits.

### **Exemptions.**

4.(1) This Act does not apply to—

- (a) insurance undertakings or undertakings carrying out the reinsurance and retrocession activities referred to in Directive 2009/138/EC when carrying out the activities referred to in that Directive;
- (b) persons providing investment services exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings;
- (c) persons providing an investment service in an incidental manner in the course of a professional activity which is regulated by legal or regulatory provisions or a code of ethics

governing the profession and which does not exclude the provision of that service;

- (d) operators with compliance obligations under Directive 2003/87/EC who, when dealing in emission allowances, do not execute client orders and who do not provide any investment services or perform any investment activities other than dealing on own account, if those persons do not apply a high-frequency algorithmic trading technique;
- (e) persons providing investment services consisting exclusively in the administration of employee-participation schemes;
- (f) persons providing investment services which only involve both the 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 and other national bodies performing similar functions in the European Union, other public bodies charged with or intervening in the management of the public debt in the EEA and international financial institutions established by two or more EEA States which have the purpose of mobilising funding and providing financial assistance to the benefit of their members that are experiencing or threatened by severe financing problems;
- (h) collective investment undertakings and pension funds whether coordinated at European Union level or not and the depositaries and managers of such undertakings;
- (i) persons providing investment advice in the course of providing another professional activity not covered by this Act where the provision of that advice is not specifically remunerated; and
- (j) a central securities depository (CSD) except as provided for in Article 73 of Regulation (EU) No 909/2014.

(2) This Act does not apply to persons dealing on own account in financial instruments other than commodity derivatives or emission allowances or derivatives of them and not providing any other investment services or performing any other investment activities in financial instruments other than commodity derivatives or emission allowances or derivatives of them unless those persons–

- (a) are market makers;
- (b) either—
  - (i) are members of or participants in a regulated market or an MTF; or
  - (ii) have direct electronic access to a trading venue;

apart from non-financial entities who execute transactions on a trading venue which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of those non-financial entities or their groups;

- (c) apply a high-frequency algorithmic trading technique; or
- (d) deal on own account when executing client orders.

(3) A person who is exempt under subsection (1)(a), (1)(h) or (4) is not required to meet the conditions in subsection (2) for the exemption under subsection (1)(a), (1)(h) or (4) to apply.

(4) Subject to subsection (5), this Act does not apply to persons—

- (a) dealing on own account, including market makers, in commodity derivatives or emission allowances or derivatives of them, excluding persons who deal on own account when executing client orders; or
- (b) providing investment services, other than dealing on own account, in commodity derivatives or emission allowances or derivatives of them to the customers or suppliers of their main business;

(5) The exemption in subsection (4) only applies where—

- (a) any activity in paragraph (a) or (b) of that subsection, when considered individually and in aggregate, is an ancillary activity to a person's main business, when considered on a group basis, and that main business is not the provision of—
  - (i) investment services within the meaning of this Act;
  - (ii) banking activities under the Capital Requirements Directive; or



- (iii) acting as a market-maker in relation to commodity derivatives;
  - (b) the person does not apply a high-frequency algorithmic trading technique; and
  - (c) the person notifies annually the relevant competent authority that they make use of this exemption and upon request report to the competent authority the basis on which they consider that their activity under subsections (4)(a) and (b) is ancillary to their main business.
- (6) Subject to subsection (7), this Act does not apply to–
- (a) transmission system operators within the meaning of Directive 2009/72/EC or Directive 2009/73/EC when carrying out their tasks under–
    - (i) those Directives;
    - (ii) Regulation (EC) No 714/2009;
    - (iii) Regulation (EC) No 715/2009; or
    - (iv) network codes or guidelines adopted under those Regulations;
  - (b) any person acting as a service provider to, and carrying out tasks on behalf of, a transmission system operator under those legislative acts, codes or guidelines; or
  - (c) any operator or administrator of an energy balancing mechanism, pipeline network or system to keep in balance the supplies and uses of energy when carrying out such tasks.
- (7) The exemption in subsection (6)–
- (a) only applies to persons engaged in the activities specified in that subsection when they provide investment services or perform investment activities relating to commodity derivatives in order to carry out those activities; and
  - (b) does not apply to the operation of a secondary market, including a platform for secondary trading in financial transmission rights.

(8) The rights conferred by this Act do 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 on the Functioning of the European Union and by Protocol No 4 on the Statute of the European System of Central Banks and of the European Central Bank or performing equivalent functions under domestic law.

(9) A determination as to whether an activity–

- (a) is provided in an incidental manner for the purposes of subsection (1)(c) must take account of any delegated acts adopted by the European Commission under Article 2(3) of MiFID; or
- (b) is to be considered as ancillary to the main business at a group level for the purposes of subsection (5)(a) must take account of any regulatory technical standards adopted by the European Commission under Article 2(4) of MiFID.

**Exempt local firms.**

5.(1) This Act applies to an exempt local firm only as provided for in this section and in regulations made under subsection (8).

(2) In this section an “exempt local firm” means an investment firm which is–

- (a) authorised by the FSC in accordance with section 6; and
- (b) identified as an exempt local firm in the register maintained under section 6(5).

(3) An authorisation granted by the FSC to an exempt local firm must include a statement to the effect that it is an authorisation which is granted in accordance with Article 3 of MiFID.

(4) An exempt local firm is not entitled to exercise the freedom to provide services or establish branches as provided for in sections 52 and 53.

(5) An exempt local firm–

- (a) must not hold client funds or client securities or place itself in debit with its clients;
- (b) must not provide any investment service other than–

- (i) the reception and transmission of orders in transferable securities and units in collective investment undertakings; or
  - (ii) the provision of investment advice in relation to those financial instruments; and
- (c) in the course of providing that service, may only transmit orders to–
- (i) investment firms authorised in accordance with this Act or MiFID;
  - (ii) credit institutions authorised in accordance with the Capital Requirements Directive;
  - (iii) branches of investment firms or credit institutions authorised in a third country and which are subject to and comply with prudential rules considered by the FSC to be at least as stringent as those laid down in MiFID, the Capital Requirements Regulation or the Capital Requirements Directive;
  - (iv) collective investment undertakings authorised under the law of an EEA State to market units to the public and to the managers of such undertakings; or
  - (v) investment companies with fixed capital (as defined in Article 17(7) of Directive 2012/30/EU) the securities of which are listed or dealt in on a regulated market in an EEA State.
- (6) An exempt local firm may provide investment services exclusively–
- (a) in commodities, emission allowances or derivatives of them for the sole purpose of hedging the commercial risks of their clients, where those clients–
    - (i) are exclusively local electricity undertakings (as defined in Article 2(35) of Directive 2009/72/EC) or natural gas undertakings (as defined in Article 2(1) of Directive 2009/73/EC);
    - (ii) jointly hold 100% of the capital or voting rights of those persons, exercise joint control; and

(iii) are exempt under section 4(4) if they carry out those investment services themselves; or

(b) in emission allowances or derivatives of them for the sole purpose of hedging the commercial risks of their clients, where those clients–

(i) are exclusively operators as defined in Article 3(f) of Directive 2003/87/EC;

(ii) jointly hold 100% of the capital or voting rights of those persons, exercise joint control; and

(iii) are exempt under section 4(4) if they carry out those investment services themselves.

(7) An exempt local firm must be a participant in the compensation scheme established under the Financial Services (Investor Compensation Scheme) Act 2002.

(8) Subject to any regulations made under subsection (9) the following provisions of this Act apply to exempt local firms as they apply to other investment firms–

(a) the authorisation and supervision requirements in sections 6(1), (5) and (6), 8, 11 to 13 and 32 to 34;

(b) the conduct of business obligations in sections 35(1), (4) to (8), (10) to (12) and (16), 39(4), (5), (10), (11) to (14) and 43; and

(c) the organisational requirements in sections 17(3), (8) and (9) and 20(1) to (9).

(9) The Minister, by regulations, may–

(a) provide further for the authorisation, conduct and supervision of exempt local firms; or

(b) apply to exempt local firms (with or without modifications) any provision of, or made under, this Act or any other law relating to the regulation of financial services.

(10) Regulations under subsection (9) may–

(a) make different provisions in relation to different cases or circumstances; or

- (b) contain any transitional, incidental or supplementary provisions that appear to the Minister to be expedient for the purposes of this Act.

**PART 2**  
**AUTHORISATION AND OPERATING CONDITIONS FOR**  
**INVESTMENT FIRMS**

*Conditions and procedures for authorization*

**Requirement for authorisation.**

6.(1) The provision of investment services or performance of investment activities as a regular occupation or business on a professional basis is subject to prior authorisation by the FSC in accordance with this Act.

(2) Despite subsection (1), a market operator may operate an MTF or OTF as part of its existing authorisation if—

- (a) the market operator has applied to the FSC, in the form and manner it may direct, for verification of the market operator's compliance with this Part; and
- (b) the FSC has given the market operator written confirmation of the market operator's compliance with this Part.

(3) If the FSC—

- (a) proposes to refuse to confirm a market operator's compliance with this Part, the FSC must give the market operator a warning notice; and
- (b) decides to refuse to confirm a market operator's compliance with this Part, the FSC must give the market operator a decision notice.

(4) The FSC may only authorise an investment firm if—

- (a) it is a legal person and—
  - (i) has its head office and registered office in Gibraltar; or
  - (ii) has no registered office, but has its head office and carries on business in Gibraltar; or
- (b) it is not a legal person and has its head office and carries on business in Gibraltar.

(5) The FSC must establish and maintain a register of all investment firms which contains information on the services or activities for which each investment firm is authorised and is–

- (a) publicly accessible;
- (b) updated on a regular basis.

(6) The FSC must ensure that ESMA is notified of every authorisation issued under this Act (other than an authorisation as an exempt local firm).

(7) A person who provides an investment service or performs an investment activity in contravention of subsection (1) commits an offence and is liable–

- (a) on conviction on indictment, to imprisonment for a term not exceeding seven years, to a fine or both;
- (b) on summary conviction, to a fine not exceeding £25,000.

(8) Subsection (7) does not apply to a person who is exempt from the need for authorisation under subsection (1).

**Scope of authorisation.**

7.(1) The FSC must ensure that an authorisation specifies the investment services or investment activities which the investment firm is authorised to provide.

(2) An authorisation may extend to one or more of the ancillary services in Section B of Schedule 1 but an authorisation may not be granted solely for the provision of ancillary services.

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

(4) An authorisation is valid for the entire EEA and allows an investment firm to perform throughout the EEA the services or activities for which it has been authorised, either through the right of establishment, including through a branch, or through the freedom to provide services.

(5) Subsection (4) does not apply to an authorisation granted to an exempt local firm.

**Grant or refusal of authorisation: procedure.**

8.(1) The FSC must not grant an authorisation unless it is satisfied that the applicant meets and will comply with the requirements of this Act.

(2) An application for authorisation must be made in the form required by the FSC and accompanied by all the information (including a programme of operations setting out, among other things, the types of business envisaged and the organisational structure) necessary to enable the FSC to satisfy itself that the investment firm has established, at the time of initial authorisation, all the necessary arrangements to meet its obligations under this Act.

(3) An authorisation may be granted subject to one or more conditions under section 85(3).

(4) If the FSC proposes to grant an authorisation application it must give written notice to the applicant.

(5) If the FSC—

- (a) proposes to refuse an application for authorisation or the extension of an authorisation or to grant the application subject to conditions, the FSC must give the applicant a warning notice; and
- (b) decides to refuse an application for authorisation or the extension of an authorisation or to grant the application subject to conditions,, the FSC must give the applicant a decision notice.

(6) An applicant must be informed, within six months of the submission of a complete application, whether or not an authorisation has been granted.

(7) This section applies subject to any regulatory technical standards or implementing technical standards adopted by the European Commission under Article 7(4) or (5) of MiFID.

**Initial capital endowment.**

9. The FSC must not grant authorisation to an investment firm unless it has sufficient initial capital, in accordance with the Capital Requirements Regulation, having regard to the nature of the investment service or activity in question.

**Membership of investor compensation scheme.**

10.(1) The FSC must ensure that any undertaking seeking authorisation as an investment firm will meet its obligations under the Financial Services (Investor Compensation Scheme) Act 2002 at the time of authorisation.

(2) The obligation under subsection (1) is met in relation to a structured deposit where the structured deposit is issued by a credit institution which is a member of a deposit guarantee scheme recognised under Directive 2014/49/EU.

**Management body.**

11.(1) The FSC must ensure that investment firms and their management bodies comply with Articles 88 and 91 of the Capital Requirements Directive.

(2) In applying subsection (1) the FSC must have regard to any guidelines issued by ESMA and the European Banking Authority under Article 9(1) of MiFID.

(3) The FSC, when granting an authorisation under section 6, may permit a member of the management body of an investment firm to hold one more non-executive directorship than is permitted by Article 91(3) of the Capital Requirements Directive.

(4) The FSC must inform ESMA regularly of any permissions granted under subsection (3).

(5) The management body of an investment firm must define, oversee and is accountable for implementing governance arrangements that ensure effective and prudent management of the investment firm, including the segregation of duties and the prevention of conflicts of interest, in a manner that promotes the integrity of the market and the interests of clients.

(6) Without affecting Article 88(1) of the Capital Requirements Directive, those governance arrangements must also ensure that the management body defines, approves and oversees—

- (a) the organisation of the firm for the provision of investment services and activities and ancillary services, including the skills, knowledge and expertise required by personnel, the resources, the procedures and the arrangements for the provision of services and activities, taking into account the nature, scale and complexity of its business and all the requirements with which the firm must comply;
- (b) a policy as to services, activities, products and operations offered or provided, in accordance with the risk tolerance of the



firm and the characteristics and needs of the clients of the firm to whom they will be offered or provided, including carrying out appropriate stress testing, where appropriate;

- (c) a remuneration policy of persons involved in the provision of services to clients aiming to encourage responsible business conduct, fair treatment of clients as well as avoiding conflicts of interest in the relationships with clients.

(7) The management body must monitor and periodically assess the adequacy and implementation of the firm's strategic objectives in the provision of investment services and activities and ancillary services, the effectiveness of the investment firm's governance arrangements and the adequacy of the policies relating to the provision of services to clients and take appropriate steps to address any deficiencies.

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

(9) The FSC must refuse to authorise an investment firm where the FSC–

- (a) is not satisfied that the members of the firm's management body–
  - (i) are of sufficiently good repute; or
  - (ii) possess sufficient knowledge, skills and experience and will commit sufficient time to perform their functions in the investment firm; or
- (b) has objective and demonstrable grounds for believing that the firm's management body may pose a threat to its effective, sound and prudent management and to the adequate consideration of the interests of its clients and the integrity of the market.

(10) An investment firm must–

- (a) notify the FSC of all members of the firm's management body and of any changes to its membership; and
- (b) provide the FSC with all the information it requires in order to assess whether the firm complies with this section.

(11) At least two persons meeting the requirements in subsection (1) must effectively direct the business of an applicant investment firm.

**Shareholders and members with qualifying holdings.**

12.(1) The FSC must not authorise the provision of investment services or performance of investment activities by an investment firm until the FSC has been informed of–

- (a) the identities of the shareholders or members with qualifying holdings (whether direct or indirect) in that firm; and
- (b) the amounts of those holdings.

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

(3) Where close links exist between an investment firm and other persons, the FSC may grant authorisation only if, in the opinion of the FSC, those links do not prevent the effective exercise of its supervisory functions.

(4) The FSC must refuse authorisation if it would be prevented from exercising its supervisory functions effectively by–

- (a) the laws, regulations or administrative provisions of a country or territory outside of the EEA governing one or more person with which a firm has close links; or
- (b) the difficulties involved in enforcing those measures.

(5) Where in the opinion of the FSC, the influence exercised by a shareholder or member with a qualifying holding is likely to be prejudicial to the sound and prudent management of an investment firm, the FSC may take any steps that it considers appropriate to end that situation.

(6) The steps which the FSC may take under subsection (5) include–

- (a) imposing sanctions on the directors and other persons responsible for the management of the investment firm;
- (b) directing that the exercise of the voting rights of the shares held by the shareholder or member in question is to be suspended; or
- (c) applying to the Supreme Court for an order.

(7) The Minister may by regulations make further provision to facilitate the operation of subsections (5) and (6).

**Withdrawal of authorisation.**

13.(1) The FSC may withdraw the authorisation of an investment firm where the investment firm—

- (a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has not provided an investment service or performed an investment activity for the preceding six months;
- (b) has obtained the authorisation by making false statements or by any other irregular means;
- (c) no longer meets the conditions under which authorisation was granted, such as compliance with the conditions set out in the Capital Requirements Regulation;
- (d) has seriously and systematically infringed the provisions of this Act or MiFIR governing the operating conditions for investment firms; or
- (e) falls within any case where withdrawal is provided for in regulations made by the Minister under this section.

(2) If the FSC—

- (a) proposes to withdraw an authorisation, it must give the investment firm a warning notice; and
- (b) decides to withdraw an authorisation, it must give the investment firm a decision notice.

(3) The FSC must ensure that ESMA is notified of every withdrawal of authorisation under this section.

*Proposed acquisitions*

**Notification of proposed acquisitions.**

14.(1) A person who intends to make a proposed acquisition in respect of an investment firm (a “proposed acquisition”) must, before doing so, notify the FSC in accordance with subsection (4).

(2) A person intends to make a proposed acquisition if that person (the “proposed acquirer”) proposes, whether directly or indirectly and whether or not acting in concert with others—

- (a) to acquire a qualifying holding in an investment firm; or
- (b) to increase a qualifying holding in an investment firm so that—
  - (i) the proportion of voting rights or capital held would be or exceed 20%, 30% or 50%; or
  - (ii) the investment firm would become a subsidiary of the proposed acquirer.

(3) A person must notify the FSC in accordance with subsection (4) before the person, whether directly or indirectly—

- (a) disposes of a qualifying holding in an investment firm; or
- (b) reduces a qualifying holding in an investment firm so that—
  - (i) the proportion of voting rights or capital held would be less than 20%, 30% or 50%; or
  - (ii) the investment firm would cease to be a subsidiary of the person making the disposal.

(4) Notice of a proposed acquisition or of a disposal to which subsection (3) applies must be given to the FSC in writing, in the form and containing the information it requires, which must include—

- (a) the size of the holding to be acquired or disposed of; and
- (b) in the case of an acquisition, the information required under section 16(4).

(5) In determining whether a person has a qualifying holding under this section or section 12, any voting rights or shares which investment firms or credit institutions may hold as a result of providing investment services and activities under Section A6 of Schedule 1 are to be disregarded where those rights are—

- (a) not exercised or used to intervene in the management of the issuer; and
- (b) disposed of within one year of acquisition.

(6) In carrying out an assessment under section 16(1) (“an acquisition assessment”), the FSC must work in full consultation with other competent authorities where the proposed acquirer is–

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

(7) The FSC must, without undue delay, provide other competent authorities with–

- (a) any information which is essential for an acquisition assessment; and
- (b) at their request, any information which may be relevant to an acquisition assessment.

(8) Where the FSC is the competent authority for the investment firm which is the subject of a proposed acquisition, any decision which the FSC makes in respect of that proposed acquisition must indicate the views or reservations (if any) expressed by the competent authority responsible for the proposed acquirer.

(9) An investment firm must inform the FSC–

- (a) at least once each year, of–
  - (i) names of the shareholders and members with qualifying holdings in the firm; and
  - (ii) the amount of each holding; and
- (b) promptly, if the firm becomes aware of–

- (i) an acquisition that causes a holding in its capital to exceed a threshold in subsection (2); or
- (ii) a disposal that causes a holding in its capital to fall below a threshold in subsection (3).

(10) If a person fails to comply with the obligation to provide the FSC with information in relation to a proposed acquisition before it takes place, the FSC may–

- (a) impose sanctions on the directors and other persons responsible for the management of the investment firm;
- (b) direct that the exercise of the voting rights of the shares held by the shareholder or member in question is to be suspended; or
- (c) apply to the Supreme Court for an order.

(11) If a proposed acquisition takes place despite the opposition of the FSC then, regardless of any other sanction it may impose, the FSC may direct that–

- (a) the votes cast are a nullity; and
- (b) any further exercise of the corresponding voting rights is suspended.

(12) The Minister may by regulations make further provision to facilitate the operation of subsections (10) and (11).

**Assessment period.**

15.(1) The FSC must send a written acknowledgment notice to a proposed acquirer when it receives from that person–

- (a) notice under section 14(1) of a proposed acquisition; or
- (b) any information requested under subsection (4).

(2) An acknowledgment notice must–

- (a) be sent promptly and, in any event, within two working days of the FSC receiving the notice or information to which it relates; and
- (b) inform the proposed acquirer of–

- (i) the date when the assessment period will end; or
- (ii) where it relates to information requested under subsection (4), of the effect of any suspension under subsection (5) on the date when the assessment period will end.

(3) Subject to subsection (5), the FSC must complete an acquisition assessment within 60 working days of the date it received notice of the proposed acquisition (“the assessment period”).

(4) The FSC may, within the first 50 days of the assessment period, send a written notice to the proposed acquirer specifying and requesting any additional information that the FSC considers necessary to complete an acquisition assessment.

(5) Where the FSC sends a notice under subsection (4), the assessment period is to be suspended from the date the notice is sent whilst a response from the proposed acquirer is awaited, but may not be suspended for more than—

- (a) 20 working days; or
- (b) 30 working days where the proposed acquirer is—
  - (i) situated or regulated outside the EEA; or
  - (ii) not subject to supervision under this Act or MiFID, the UCITS Directive, Directive 2009/138/EC or the Capital Requirements Directive.

(6) Only one notice may be sent to a proposed acquirer under subsection (4) and any further request for the completion or clarification of information sent by the FSC may not suspend the assessment period.

(7) If the FSC, having completed an acquisition assessment, decides to oppose a proposed acquisition—

- (a) it must, within two working days of doing so (and within the assessment period), inform the proposed acquirer in writing of the decision and the reasons for it; and
- (b) it must publish a statement about its decision and the reasons for it at the request of the proposed acquirer.

(8) In the absence of a request from the proposed acquirer, the FSC may only publish a statement under subsection (7)(b) with the consent of the Minister.

(9) The FSC is to be regarded as having approved a proposed acquisition if, within the assessment period, it does not give notice under subsection (7) opposing the acquisition.

(10) The FSC may—

- (a) specify a maximum period in which a proposed acquisition that it has approved must be concluded; and
- (b) by notice to the proposed acquirer may extend any period which it has so specified.

(11) This section applies subject to any regulatory technical standards or implementing technical standards adopted by the European Commission under Article 12(8) or (9) of MiFID.

**Assessment.**

16.(1) In assessing a proposed acquisition the FSC, in order to ensure the sound and prudent management of the investment firm concerned and having regard to the likely influence of the proposed acquirer on that firm, must appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against the following criteria—

- (a) the reputation of the proposed acquirer;
- (b) the reputation and experience of any person who will direct the business of the investment firm as a result of the proposed acquisition;
- (c) the financial soundness of the proposed acquirer, in particular, in relation to the type of business pursued and envisaged in the investment firm in which the acquisition is proposed;
- (d) whether the investment firm will be able to comply and continue to comply with the prudential requirements under this Act and other applicable law, in particular, Directive 2002/87/EC and the Capital Requirements Directive;
- (e) where applicable, whether any group of which the investment firm will become a part has a structure that enables the FSC and any other competent authority to exercise effective



supervision, effectively exchange information and allocate responsibilities among themselves;

- (f) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC is being or has been committed or attempted, or that the proposed acquisition could increase the risk of it being committed or attempted.

(2) The FSC may oppose a proposed acquisition only if–

- (a) there are reasonable grounds for doing so based upon the criteria in subsection (1); or
- (b) the information provided by the proposed acquirer is incomplete.

(3) The FSC must not impose any prior conditions in respect of the level of holding that must be acquired nor examine the proposed acquisition in terms of the economic needs of the market.

(4) The FSC must publish a list of the information that it needs to assess a proposed acquisition and which must be provided to the FSC at the same time as any notice under section 14(1).

(5) The information included in any list under subsection (4) must be proportionate, adapted to the nature of the proposed acquirer and proposed acquisition and must not go beyond what is relevant for conducting a prudential assessment.

(6) Despite section 15(1) to (6), where the FSC is notified of two or more proposed acquisitions in respect of the same investment firm, it must treat the proposed acquirers in a non-discriminatory manner.

#### *Organisational and product governance requirements*

#### **Organisational requirements.**

17.(1) An investment firm must comply with the requirements in this section and in sections 20 and 28.

(2) An investment firm must establish–

- (a) adequate policies and procedures which are sufficient to ensure compliance by the firm, including its managers, employees and tied agents, with its obligations under this Act; and

- (b) appropriate rules governing personal transactions by those persons.

(3) An investment firm must maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest (within the meaning of section 34) from adversely affecting the interests of its clients.

(4) An investment firm which manufactures financial instruments for sale to clients must maintain, operate and review a process for the approval of each financial instrument and significant adaptations of existing financial instruments before it is marketed or distributed to clients.

(5) A product approval process must—

- (a) specify an identified target market of end clients within the relevant category of clients for each financial instrument;
- (b) ensure that—
  - (i) all relevant risks to that identified target market are assessed; and
  - (ii) the intended distribution strategy is consistent with the identified target market.

(6) An investment firm must regularly review the financial instruments it offers or markets, taking into account any event that could materially affect the potential risk to the identified target market, to assess at least whether—

- (a) the financial instrument remains consistent with the needs of the identified target market;
- (b) the intended distribution strategy remains appropriate.

(7) An investment firm which manufactures financial instruments must make available to any distributor all appropriate information on the financial instrument and the product approval process, including the identified target market of the financial instrument.

(8) Where an investment firm offers or recommends financial instruments which it does not manufacture, it must have adequate arrangements in place to obtain the information referred to in subsection (7) and to understand the characteristics and identified target market of each financial instrument.

(9) Subsections (3) to (8) apply without limiting any other requirement under this Act or MiFIR, including those relating to disclosure, suitability or appropriateness, identification and management of conflicts of interests, and inducements.

(10) An investment firm must take reasonable steps to ensure continuity and regularity in its performance of investment services and activities and, to that end, must employ appropriate and proportionate systems, resources and procedures.

(11) An investment firm—

- (a) must take reasonable steps to avoid undue additional operational risk arising from the performance on its behalf by a third party of any operational function which is critical for the provision of continuous and satisfactory provision of investment services or performance of investment activities; and
- (b) must not outsource important operational functions in a manner which will impair—
  - (i) the quality of its internal control; or
  - (ii) the FSC's ability to monitor the firm's compliance with its obligations.

(12) An investment firm must have sound and effective—

- (a) administrative and accounting procedures;
- (b) internal control mechanisms;
- (c) procedures for risk assessment; and
- (d) control and safeguard arrangements for information processing systems.

(13) An investment firm must have sound security mechanisms in place to—

- (a) guarantee the security and authentication of the means of transfer of information;
- (b) minimise the risk of data corruption and unauthorised access; and

- (c) prevent information leakage and maintain the confidentiality of data.

(14) Subsection (13) applies without affecting the FSC's powers under this Act or MiFIR to require access to communications.

(15) An investment firm must make adequate arrangements—

- (a) when holding financial instruments belonging to clients—
  - (i) to safeguard the ownership rights of clients, especially in the event of the investment firm's insolvency; and
  - (ii) to prevent the use of a client's financial instruments on own account other than with the client's express consent; and
- (b) when holding funds belonging to clients—
  - (i) to safeguard the rights of clients; and
  - (ii) to prevent the use of client funds for its own account (except in the case of credit institutions).

(16) An investment firm must not conclude title transfer financial collateral arrangements with retail clients for the purpose of securing or covering present or future, actual or contingent or prospective obligations of clients.

**Product governance: firms manufacturing financial instruments.**

18.(1) An investment firm which manufactures financial instruments must comply with this section, in an appropriate and proportionate manner, taking account of the nature of the financial instrument, the investment service and the target market for the product.

(2) For the purposes of this section, the manufacturing of a financial instrument includes the creation, development, issue or design of a financial instrument.

(3) An investment firm must establish, implement and maintain procedures and measures to ensure—

- (a) that the manufacturing of financial instruments complies with the requirements on proper management of conflicts of interest, including remuneration; and

- (b) in particular, that the design of a financial instrument, including its features, does not adversely affect end clients or lead to problems with market integrity by enabling the firm to mitigate or dispose of its own risks or exposure to the underlying assets of the product (where it holds the underlying assets on own account).

(4) An investment firm must analyse potential conflicts of interests each time a financial instrument is manufactured and, in particular, must assess whether the financial instrument creates a situation where end clients may be adversely affected if they take—

- (a) an exposure opposite to the one previously held by the firm; or
- (b) an exposure opposite to the one that the firm wants to hold after the sale of the product.

(5) An investment firm, before deciding to proceed with the launch of the financial instrument, must consider whether it may represent a threat to the orderly functioning or stability of financial markets.

(6) An investment firm must ensure that relevant staff involved in the manufacturing of financial instruments possess the necessary expertise to understand the characteristics and risks of the financial instruments they intend to manufacture.

(7) An investment firm must ensure that its management body has effective control over the firm's product governance process and that—

- (a) compliance reports to the management body systematically include information about the financial instruments manufactured by the firm and their distribution strategy; and
- (b) those reports are made available to the FSC upon request.

(8) An investment firm must ensure that its compliance function monitors the development and periodic review of product governance arrangements, in order to detect any risk of failure by the firm to comply with its obligations under this section.

(9) Where an investment firm creates, develops, issues or designs a product in collaboration with another entity, including a firm which is not authorised under this Act or MiFID or is not a third-country firm, it must ensure that they outline their mutual responsibilities in a written agreement.

(10) An investment firm must identify, with sufficient level of detail, the potential target market for each financial instrument and, as part of this process, must–

- (a) specify the type of client for whose needs, characteristics and objectives the financial instrument is compatible; and
- (b) identify any groups of clients for whose needs, characteristics and objectives the financial instrument is not compatible.

(11) For the purposes of subsection (10)–

- (a) where investment firms collaborate in the manufacture of a financial instrument, only one target market needs to be identified; and
- (b) where an investment firm manufactures financial instruments that are distributed through other investment firms, it must determine the needs and characteristics of clients for whom the product is compatible based upon its theoretical knowledge of and past experience with the financial instrument or similar financial instruments, the financial markets and the needs, characteristics and objectives of potential end clients.

(12) An investment firm must undertake a scenario analysis of its financial instruments, in order to assess the risks of poor outcomes for end clients posed by the product and the circumstances in which those outcomes may occur, including by assessing financial instruments under negative conditions, such as what would happen if–

- (a) the market environment deteriorates;
- (b) the manufacturer or a third party involved in the manufacturing or functioning of the financial instrument experiences financial difficulties or other counterparty risk materialises;
- (c) the financial instrument fails to become commercially viable;  
or
- (d) demand for the financial instrument is much higher than anticipated, putting a strain on the firm's resources or on the market of the underlying instrument.

(13) An investment firm must determine whether a financial instrument meets the identified needs, characteristics and objectives of the target market, including by examining whether–

- (a) the financial instrument's risk/reward profile is consistent with the target market; and
- (b) the financial instrument's design is driven by features that benefit the client and not by a business model that relies upon poor client outcomes to be profitable.

(14) An investment firm must consider the charging structure proposed for the financial instrument, including by examining whether–

- (a) the financial instrument's costs and charges are compatible with the needs, objectives and characteristics of the target market;
- (b) the proposed charges undermine the financial instrument's return expectations, for example, where the charges equal, exceed or remove most of the expected tax advantages linked to a financial instrument; and
- (c) the charging structure is appropriately transparent for the target market, for example, by not disguising charges or being too complex to understand.

(15) An investment firm must ensure that the information about a financial instrument provided to distributors includes information about the appropriate channels for distribution of the financial instrument, the product approval process and the target market assessment and is of an adequate standard to enable distributors to understand and recommend or sell the financial instrument properly.

(16) An investment firm must review on a regular basis the financial instruments it manufactures, taking account of any event that could materially affect the potential risk to the identified target market, and consider whether–

- (a) the financial instrument remains consistent with the needs, characteristics and objectives of the target market; and
- (b) it is being distributed to the target market, or
- (c) is reaching clients for whose needs, characteristics and objectives the financial instrument is not compatible.

(17) An investment firm must review a financial instrument–

- (a) prior to any further issue or re-launch, if it is aware of any event that could materially affect the potential risk to investors; and

- (b) at regular intervals, determined in accordance with subsection (18), to assess whether the financial instrument functions as intended.

(18) An investment firm must determine how regularly to review its financial instruments based on all relevant factors, including–

- (a) those linked to the complexity or innovative nature of the investment strategies pursued; and
- (b) crucial events that are identified by the firm and would affect the potential risk or return expectations of the financial instrument, such as–
  - (i) the crossing of a threshold that will affect the return profile of the financial instrument; or
  - (ii) the solvency of certain issuers whose securities or guarantees may impact the performance of the financial instrument.

(19) Where an event of the kind mentioned in subsection (18)(b) occurs, an investment firm must take appropriate action, which may consist of–

- (a) the provision of any relevant information on the event and its consequences on the financial instrument to the clients or distributors of the financial instrument, if the investment firm does not offer or sell the financial instrument directly to the clients;
- (b) changing the product approval process;
- (c) stopping further issuance of the financial instrument;
- (d) changing the financial instrument to avoid unfair contract terms;
- (e) where the firm becomes aware that the financial instrument is not being sold as envisaged, considering whether the sales channels through which it is sold are appropriate;
- (f) contacting the distributor to discuss a modification of the distribution process;
- (g) terminating the relationship with the distributor; or



- (h) informing the FSC or other relevant competent authority.

**Product governance obligations for distributors.**

19.(1) An investment firm, when deciding upon the range of financial instruments and services it intends to offer or recommend to clients, must comply with this section in an appropriate and proportionate manner, taking account of the nature of the financial instrument, the investment service and the target market for the product.

(2) An investment firm must also comply with the other requirements of this Act when offering or recommending financial instruments manufactured by entities that are not subject to this Act or MiFID.

(3) For the purposes of subsection (2), an investment firm must—

- (a) have effective arrangements in place to ensure that it obtains sufficient information about those financial instruments from those manufacturers; and
- (b) determine the target market for those financial instruments, even if a target market was not defined by the manufacturer.

(4) An investment firm must have in place adequate product governance arrangements to ensure that—

- (a) the products and services it intends to offer or recommend are compatible with the needs, characteristics, and objectives of an identified target market;
- (b) its intended distribution strategy is consistent with the identified target market;
- (c) it appropriately identifies and assesses the circumstances and needs of the clients it intends to focus on, so as to ensure that clients' interests are not compromised as a result of commercial or funding pressures; and
- (d) it identifies any groups of clients for whose needs, characteristics and objectives the product or service is not compatible.

(5) An investment firm must obtain from a manufacturer that is subject to this Act or MiFID sufficient information in order to—

- (a) gain the necessary understanding and knowledge of the products the firm intends to recommend or sell; and

- (b) ensure that those products will be distributed in accordance with the needs, characteristics and objectives of the identified target market.

(6) An investment firm must—

- (a) take all reasonable steps to obtain adequate and reliable information from a manufacturer that is not subject to this Act or MiFID, in order to ensure that its products will be distributed in accordance with the characteristics, objectives and needs of the target market; and
- (b) where relevant information is not publicly available, the distributor must take all reasonable steps to obtain that information from the manufacturer or its agent.

(7) Subsection (6) applies to products sold on primary and secondary markets and is to apply in a proportionate manner, taking account of the complexity of the product and the degree to which publicly available information is obtainable and, for the purposes of that subsection, acceptable publicly available information is information which is clear, reliable and produced to meet regulatory requirements, such as the disclosure requirements under Directive 2003/71/EC or 2004/109/EC.

(8) An investment firm must use the information obtained from manufacturers and information on their own clients to identify the target market and distribution strategy and, where an investment firm acts both as a manufacturer and a distributor, only one target market assessment is required.

(9) An investment firm, when deciding upon the range of financial instrument and services that it offers or recommends and the respective target markets, must—

- (a) maintain appropriate procedures and measures to ensure compliance with all applicable requirements under this Act, including those relating to disclosure, assessment of suitability or appropriateness, inducements and the proper management of conflicts of interest; and
- (b) exercise particular care when distributors intend to offer or recommend new products or there are variations to the services they provide.

(10) An investment firm must periodically review and update its product governance arrangements, in order to ensure that they remain robust and fit for purpose, and take appropriate action as necessary.

(11) An investment firm must review on a regular basis the investment products it offers or recommends and the services it provides, taking account of any event that could materially affect the potential risk to the identified target market, including assessing whether–

- (a) the products or services remain consistent with the needs, characteristics and objectives of the target market; and
- (b) the intended distribution strategy remains appropriate.

(12) An investment firm must reconsider the target market or update the product governance arrangements if, following a review under subsection (11), it becomes aware that–

- (a) it has wrongly identified the target market for a specific product or service; or
- (b) the product or service no longer meets the circumstances of the identified target market, such as where the product becomes illiquid or very volatile due to market changes.

(13) An investment firm must ensure that its compliance function oversees the development and periodic review of its product governance arrangements, in order to detect any risk of failure by the firm to comply with its obligations under this section.

(14) An investment firm must ensure that relevant staff possess the necessary expertise to understand the characteristics and risks of the products that the firm intends to offer or recommend, the services it provides and the needs, characteristics and objectives of the identified target market.

(15) An investment firm must ensure that its management body has effective control over the firm's product governance process, to determine the range of investment products that it offers or recommends and the services it provides to the respective target markets, and that–

- (a) compliance reports to the management body systematically include information about the products it offers or recommends and the services it provides; and
- (b) those reports are made available to the FSC upon request.

(16) Distributors must provide manufacturers with information on sales and, where appropriate, on reviews carried out under this section, in order to support product reviews carried out by manufacturers.

(17) Where investment firms work together in the distribution of a product or service—

- (a) the investment firm with the direct client relationship has the ultimate responsibility for meeting the product governance obligations under this section; but
- (b) an intermediary investment firm must—
  - (i) ensure that relevant product information is passed from the manufacturer to the final distributor in the chain;
  - (ii) enable the manufacturer to obtain the information on product sales which it requires in order to comply with its own product governance obligations; and
  - (iii) apply the product governance obligations for manufacturers, as appropriate, in relation to the services it provides.

**Telephone and other records.**

20.(1) An investment firm must arrange for records to be kept of all services, activities and transactions undertaken by it which are sufficient to enable the FSC—

- (a) to fulfil its supervisory tasks and take enforcement action under this Act, MiFIR, the Market Abuse Act 2016 and the Market Abuse Regulation, and
- (b) to ascertain, in particular, whether the investment firm has complied with all its obligations, including those with respect to clients, potential clients and the integrity of the market.

(2) Those records must include the recording of telephone conversations or electronic communications—

- (a) relating to—
  - (i) transactions concluded when dealing on own account; and

(ii) the provision of client order services that relate to the reception, transmission and execution of client orders; or

(b) that are intended to result in the conclusion of transactions or the provision of client order services of that kind, even if they do not so.

(3) For those purposes, an investment firm must take all reasonable steps to record relevant telephone conversations and electronic communications that are made, sent or received using equipment which the investment firm—

(a) has provided to an employee or contractor; or

(b) has accepted or permitted an employee or contractor to use.

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

(5) An investment firm must notify all clients, both new and existing, that telephone communications or conversations between the investment firm and its clients that result or may result in transactions will be recorded.

(6) A notification under subsection (5) may be made once, before the provision of investment services to any new or existing client.

(7) An investment firm must not provide investment services and activities by telephone to clients who have not been notified in advance about the recording of their telephone communications or conversations, where the investment services and activities relate to the reception, transmission and execution of client orders.

(8) An investment firm must keep records of orders placed by clients through other communication channels, which must be made in a durable medium including—

(a) faxes, emails or letters; or

(b) written minutes or notes of meetings.

(9) Any records kept in accordance with this section must be—

(a) provided to the client concerned upon request;

(b) kept for five years and, where requested by the competent authority, for a period of up to seven years.

(10) Without affecting the powers of its home State competent authority, where an investment firm established in another EEA State has a branch in Gibraltar, the FSC may enforce the obligations in this section in respect of transactions undertaken by that branch.

(11) The Minister may by regulations specify additional requirements for the safeguarding of client funds and client assets with which investment firms must comply.

(12) Requirements may only be imposed under subsection (11) in exceptional circumstances and must be proportionate, objectively justified and address specific risks to investor protection or market integrity which are of particular importance in the circumstances of the market structure in Gibraltar.

(13) The Minister must notify the European Commission of any intention to impose additional requirements under subsection (11) without undue delay and in any event not less than two months before the relevant regulations come into operation.

*Safeguarding of client financial instruments and funds*

**Safeguarding of client financial instruments and funds.**

21.(1) An investment firm must—

- (a) keep records and accounts enabling it at any time and without delay to distinguish assets held for one client from assets held for any other client and from its own assets;
- (b) maintain its records and accounts in a way that ensures—
  - (i) they are accurate and, in particular, correspond to the financial instruments and funds held for clients; and
  - (ii) they may be used as an audit trail;
- (c) conduct regular reconciliations between its internal accounts and records and those of any third parties by whom assets are held;
- (d) take the necessary steps to ensure that any client financial instruments deposited with a third party in accordance with section 22 are identifiable separately from financial instruments belonging to the firm or that third party, by means of differently

titled accounts on the books of the third party or other equivalent measures that achieve the same level of protection;

- (e) take the necessary steps to ensure that client funds deposited in accordance with section 23 in a central bank, a credit institution, a bank authorised in a third country or a qualifying money market fund are held in an account identified separately from any account used to hold funds belonging to the firm; and
- (f) introduce adequate organisational arrangements to minimise the risk of the loss or diminution of client assets or rights in connection with those assets, as a result of misuse of the assets, fraud, poor administration, inadequate record-keeping or negligence.

(2) If the applicable law, in particular, the law relating to property or insolvency, prevents an investment firm from complying with subsection (1) to safeguard clients' rights in a manner which satisfies the requirements of section 17(15), the investment firm must put in place arrangements which ensure that clients' assets are safeguarded in a manner which meets the objectives of subsection (1).

(3) If the law of the jurisdiction in which client funds or financial instruments are held prevents an investment firm from complying with subsection (1)(d) or (e), the investment firm must—

- (a) comply with any requirements having equivalent effect in terms of safeguarding clients' rights which the Minister may by regulations prescribe; and
- (b) inform clients that they do not benefit from the protection provided under subsection (1)(d) or (e) (or both).

(4) An investment firm must not enter into any arrangement which creates a security interest, lien or right of set-off over a client's financial instruments or funds that enables a third party to dispose of the client's financial instruments or funds in order to recover debts that do not relate to the client or the provision of services to the client.

(5) Subsection (4) does not apply where client funds or financial instruments are held in a third country jurisdiction in which an arrangement of the kind specified in that subsection is required by law but, in that event, the investment firm must disclose to clients the existence of and risks associated with that arrangement.

(6) Where an investment firm—

- (a) grants a security interest, lien or right of set-off over client financial instruments or funds; or
- (b) has been informed that an interest, lien or right of that kind has been granted;

the firm must record it in client contracts and the firm's own accounts to make the client's ownership of assets clear, such as in the event of an insolvency.

(7) An investment firm must make information relating to clients' financial instruments and funds readily available to—

- (a) the FSC and other competent authorities;
- (b) appointed insolvency practitioners; and
- (c) those responsible for the resolution of failed financial institutions.

(8) The information which must be made available under subsection (7) includes—

- (a) related internal accounts and records that readily identify the balances of funds and financial instruments held for each client;
- (b) where client funds are held by an investment firm in accordance with section 23, details of the accounts in which client funds are held and of the relevant agreements with the firm;
- (c) where financial instruments are held by an investment firm in accordance with section 22, details of the accounts opened and relevant agreements with those third parties, as well as details of the relevant agreements with the firm;
- (d) details of third parties carrying out any related outsourced tasks and details of those tasks;
- (e) key individuals in the firm involved in related processes, including those responsible for oversight of the firm's requirements in relation to the safeguarding of client assets; and
- (f) agreements which are relevant to establish clients' ownership of assets.



**Depositing client financial instruments.**

22.(1) An investment firm may deposit financial instruments held by it on behalf of its clients into an account opened with a third party provided that the firm exercises all due skill, care and diligence in the selection, appointment and periodic review of the third party and of the arrangements for the holding and safekeeping of those financial instruments.

(2) In applying subsection (1), an investment firm must take account of the expertise and market reputation of the third party and any legal requirements related to the holding of those financial instruments that could adversely affect clients' rights.

(3) An investment firm must only deposit financial instruments with a third party if it is in a jurisdiction where the safekeeping of financial instruments for the account of another person is subject to specific regulation and supervision and the third party is subject to that specific regulation and supervision.

(4) An investment firm must not deposit financial instruments held on behalf of clients with a third party in a third country that does not regulate the holding and safekeeping of financial instruments for the account of another person except where—

- (a) the nature of the financial instruments or the investment services connected with those instruments requires them to be deposited with a third party in that third country; or
- (b) the financial instruments are held on behalf of a professional client and the client has requested in writing that the firm to deposit them with a third party in that third country.

(5) The requirements of subsections (3) and (4) also apply to a third party which holds financial instruments on behalf of an investment firm and proposes to delegate any of its functions concerning the holding and safekeeping of those financial instruments to another third party.

**Depositing client funds.**

23.(1) An investment firm must promptly place any client funds it receives into an account opened with—

- (a) a central bank;
- (b) a credit institution authorised in accordance with the Capital Requirements Directive;

- (c) a bank authorised in a third country; or
- (d) a qualifying money market fund.

(2) Subsection (1) does not apply to a credit institution authorised in accordance with the Capital Requirements Directive in relation to deposits within the meaning of that Directive held by that institution.

(3) An investment firm which does not deposit client funds with a central bank must—

- (a) exercise all due skill, care and diligence in the selection, appointment and periodic review of the credit institution, bank or money market fund where those funds are placed and the arrangements for the holding of those funds; and
- (b) as part of its due diligence, consider the need for diversification of those funds.

(4) In applying subsection (3) an investment firm, with a view to ensuring the protection of clients' rights, must take account of—

- (a) the expertise and market reputation of the institution or money market fund; and
- (b) any legal or regulatory requirements or market practices related to the holding of client funds that could adversely affect those rights.

(5) An investment firms may only place a client's funds in a qualifying money market fund where—

- (a) the firm has informed the client that funds placed with a qualifying money market fund will not be held in accordance with the requirements for safeguarding client funds set out sections 21 to 25; and
- (b) the client has given explicit consent for the funds to be placed in the qualifying money market fund.

(6) An investment firm that deposits client funds with a credit institution, bank or money market fund which is part of the same group as the investment firm, must not deposit more than 20% of the firm's client funds with any entity or combination of entities within the group.

(7) An investment firm does not need to comply with subsection (6) in circumstances where it is able to show that doing so would be disproportionate having regard to—

- (a) the nature, scale and complexity of the firm's business;
- (b) the balance of client funds held by the firm; and
- (c) the security offered by the group entity or combination of group entities concerned.

(8) An investment firm which proposes to rely upon the exception in subsection (7) must—

- (a) notify the FSC of the firm's initial proportionality assessment under that subsection; and
- (b) periodically review that assessment and notify the FSC of the outcome of the review.

**Use of client financial instruments.**

24.(1) An investment firm must not—

- (a) enter into arrangements for securities financing transactions in respect of financial instruments held by the firm on behalf of a client; or
- (b) otherwise use those financial instruments for its own account or the account of any other person or client of the firm;

unless the conditions in subsection (2) are met.

(2) The conditions are that—

- (a) the client has given express prior consent to the use of the instruments, on specified terms which are—
  - (i) evidenced in writing; and
  - (ii) affirmatively executed, by signature or equivalent means; and
- (b) the use of the client's financial instruments is restricted to the specified terms to which the client has consented.

(3) An investment firm must not—

- (a) enter into arrangements for securities financing transactions in respect of financial instruments which are held on behalf of a client in an omnibus account maintained by a third party; or
- (b) otherwise use those financial instruments for its own account or the account of any other person;

unless, in addition to the conditions in subsection (2), the conditions in either or both of subsection (4)(a) or (b) (or both) and in subsection (4)(c) are met.

(4) The conditions are that—

- (a) each client whose financial instruments are held together in the same omnibus account has given express prior consent to the use of the instruments, on specified terms which are—
  - (i) evidenced in writing; and
  - (ii) affirmatively executed, by signature or equivalent means; or
- (b) the investment firm has in place systems and controls which ensure that only financial instruments belonging to clients who have given prior express consent in accordance with subsection (2)(a) are so used; and
- (c) the investment firm maintains records which include details of the clients on whose instructions the use of the financial instruments has been effected and the number of financial instruments used belonging to each client who has given consent, so as to enable the correct allocation of any loss.

(5) An investment firm must take appropriate measures to prevent the unauthorised use of client financial instruments for its own account or the account of any other person, including—

- (a) concluding agreements with clients on the measures to be taken by the firm if the client does not have enough provision on its account on the settlement date (such as borrowing the corresponding securities on the client's behalf or unwinding the position);
- (b) closely monitoring its projected ability to deliver on the settlement date and the putting in place of remedial measures if this cannot be done; and

- (c) closely monitoring and promptly requesting undelivered securities which are outstanding on or after the settlement day.

(6) An investment firm must adopt specific arrangements for all clients which ensure that–

- (a) a borrower of client financial instruments provides appropriate collateral; and
- (b) the firm monitors the continuing appropriateness of the collateral provided and takes any steps which are necessary to maintain the balance of the collateral with the value of the client instruments.

(7) An investment firm must not enter into any collateral arrangement which is prohibited under section 17(16).

**Inappropriate use of title transfer collateral arrangements.**

25.(1) An investment firm must be able to demonstrate that it has properly considered any use of title transfer collateral arrangements in the context of the relationship between the client's obligation to the firm and the client assets which the firm has subjected to title transfer collateral arrangements.

(2) When considering and documenting the appropriateness of any title transfer collateral arrangements, an investment firm must take account of the following factors–

- (a) whether there is only a very weak connection between the client's obligation to the firm and the use of title transfer collateral arrangements, including whether the likelihood of a client's liability to the firm is low or negligible;
- (b) whether the amount of client funds or financial instruments subject to title transfer collateral arrangements far exceeds the client's obligation to the firm; and
- (c) whether all clients' financial instruments or funds are made subject to title transfer collateral arrangements without consideration of each client's obligation to the firm.

(3) An investment firm which uses title transfer collateral arrangements must highlight to professional clients and eligible counterparties the risks involved and the effect of any title transfer collateral arrangement on the client's financial instruments and funds.

**Governance arrangements concerning the safeguarding of client assets.**

26.(1) An investment firm must appoint a single officer of sufficient skill and authority with specific responsibility for matters relating to the firm's compliance with its obligations regarding the safeguarding of client financial instruments and funds.

(2) The person appointed by an investment firm under subsection (1) may discharge other responsibilities within the firm where the firm is satisfied that doing so will not hinder the discharge of the person's responsibilities under that subsection or the firm's compliance with any other provision of this Act.

**Reports by external auditors.**

27. An investment firm must ensure that its external auditors report at least annually to the FSC on the adequacy of the firm's arrangements under section 17(15) and (16) and sections 21 to 26.

**Algorithmic trading.**

28.(1) An investment firm that engages in algorithmic trading must—

- (a) have in place effective systems and risk controls suitable to the business it operates to ensure that its trading systems—
  - (i) are resilient and have sufficient capacity;
  - (ii) are subject to appropriate trading thresholds and limits;
  - (iii) prevent the sending of erroneous orders or otherwise functioning in a way that may create or contribute to a disorderly market; and
  - (iv) cannot be used for any purpose that is contrary to the Market Abuse Regulation or the rules of any trading venue to which it is connected;
- (b) have in place effective business continuity arrangements to deal with any failure of its trading systems; and
- (c) ensure its systems are fully tested and properly monitored to ensure that they meet the requirements in this section.

(2) An investment firm that engages in algorithmic trading—

- (a) in Gibraltar or an EEA State and whose home State is Gibraltar must promptly notify–
  - (i) the FSC; and
  - (ii) if different, the competent authority of the home State of the trading venue at which the firm engages in algorithmic trading as a member or participant; or
- (b) using a trading venue in Gibraltar at which the firm engages in algorithmic trading as a member or participant but whose home State is not Gibraltar must promptly notify–
  - (i) the FSC; and
  - (ii) the competent authority in its home State.

(3) The FSC may require an investment firm to provide it, either on a regular basis or at the FSC's request, with–

- (a) a description of the nature of its algorithmic trading strategies;
- (b) details of the trading parameters or limits to which the system is subject;
- (c) details of the key compliance and risk controls that it has in place to ensure the requirements of subsection (1) are satisfied; and
- (d) details of the testing of its systems.

(4) The FSC may, at any time, request further information from an investment firm about its algorithmic trading and the systems used for that trading.

(5) Where the FSC is the home State competent authority of an investment firm it must, at the request of the competent authority of a trading venue at which the investment firm is engaged in algorithmic trading as a member or participant, and without undue delay, provide that competent authority with the information in subsection (3) that the FSC has received from the investment firm.

(6) An investment firm must arrange for records to be kept in relation to the matters in subsections (2) to (5) and ensure that those records are sufficient to enable the FSC to monitor the firm's compliance with the requirements of this Act.

(7) An investment firm that engages in a high-frequency algorithmic trading technique must store in an approved form accurate and time sequenced records of all its placed orders, including cancelled orders, executed orders and quotations on trading venues and must make them available to the FSC upon request.

(8) An investment firm that engages in algorithmic trading to pursue a market making strategy must, taking into account the liquidity, scale and nature of the specific market and the characteristics of the instrument traded—

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

(9) For the purposes of this section and section 65, an investment firm that engages in algorithmic trading must be considered to be pursuing a market making strategy when, as a member or participant of one or more trading venues, its strategy when dealing on own account involves posting firm, simultaneous two-way quotes of comparable size and at competitive prices relating to one or more financial instruments on a single trading venue or across different trading venues, with the result of providing liquidity on a regular and frequent basis to the overall market.

(10) An investment firm that provides direct electronic access to a trading venue must have in place effective systems and controls which ensure that—

- (a) the suitability of clients using the service is properly assessed and reviewed;
- (b) clients using the service are prevented from exceeding appropriate pre-set trading and credit thresholds;
- (c) trading by clients using the service is properly monitored;
- (d) appropriate risk controls prevent trading that—
  - (i) may create risks to the investment firm;



- (ii) could create or contribute to a disorderly market; or
- (iii) could be contrary to the Market Abuse Regulation or the rules of the trading venue.

(11) The provision of direct electronic access to a trading venue without the controls specified in subsection (10) is prohibited.

(12) An investment firm that provides direct electronic access is responsible for ensuring that clients using the service comply with the requirements of this Act and the rules of the trading venue and, for those purposes, an investment firm must monitor transactions in order to identify infringements of those rules, disorderly trading conditions or conduct that may involve market abuse and that is to be reported to the competent authority.

(13) An investment firm must ensure that there is a binding written agreement between the investment firm and the client regarding the essential rights and obligations arising from the provision of the service and that under the agreement the investment firm retains responsibility under this Act.

(14) An investment firm that provides direct electronic access to a trading venue must notify–

- (a) its home State competent authority; and
- (b) the home State competent authority of the trading venue at which the investment firm provides direct electronic access.

(15) The FSC, where it is the home State competent authority of an investment firm–

- (a) may require the investment firm to provide the FSC, on a regular basis or at its request, with–
  - (i) a description of the systems and controls referred to in subsection (10); and
  - (ii) evidence that they have been applied; and
- (b) must, at the request of the competent authority of a trading venue in relation to which the investment firm provides direct electronic access, without undue delay provide that competent authority with the information which the FSC receives under paragraph (a) from the investment firm.

(16) An investment firm must arrange for records to be kept in relation to the matters referred to in subsections (10) to (15) and ensure that those records are sufficient to enable the FSC to monitor the firm's compliance with the requirements of this Act.

(17) An investment firm that acts as a general clearing member for other persons—

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

(18) This section applies subject to any regulatory technical standards adopted by the European Commission under Article 17(7) of MiFID.

#### **Trading process and transaction finalisation in an MTF and OTF.**

29.(1) An investment firm or market operator operating an MTF or OTF, in addition to meeting the organisational requirements laid down in section 17, must establish—

- (a) transparent rules and procedures for fair and orderly trading;
- (b) objective criteria for the efficient execution of orders; and
- (c) arrangements for the sound management of the technical operations of the facility, including effective contingency arrangements to cope with systems disruption risks.

(2) An investment firm or market operator operating an MTF or OTF must—

- (a) establish transparent rules regarding the criteria for determining the financial instruments that can be traded under its systems;

- (b) provide or be satisfied 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;
  - (c) establish, publish and implement transparent and non-discriminatory rules, based on objective criteria, governing access to its facility;
  - (d) have arrangements to identify clearly and manage the potential adverse consequences for the operation of the MTF or OTF, or its members, participants and users, of any conflict of interest between—
    - (i) the interest of the MTF, the OTF, their owners or the investment firm or market operator operating the MTF or OTF; and
    - (ii) the sound functioning of the MTF or OTF; and
  - (e) comply with sections 65 and 66 and have in place the necessary effective systems, procedures and arrangements to do so.
- (3) An investment firm or market operator operating an MTF or OTF must—
- (a) clearly inform its members or participants of their respective responsibilities for the settlement of the transactions executed in that facility; and
  - (b) put in place the necessary arrangements to facilitate the efficient settlement of those transactions.
- (4) An MTF or OTF must have at least three materially active members or users, each having the opportunity to interact with all the others in respect to price formation.
- (5) Where a transferable security that has been admitted to trading on a regulated market is also traded on an MTF or OTF without the consent of the issuer, the issuer has no financial disclosure obligation in respect of that MTF or OTF.
- (6) An investment firm or market operator operating an MTF or OTF must comply immediately with any instruction to suspend or remove a financial instrument from trading given by the FSC under section 85(2).

(7) An investment firm or market operator operating an MTF or OTF must provide the FSC with a detailed description of the functioning of the MTF or OTF, including–

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

(8) Subsection (7) applies without limiting section 31(1), (5) and (6).

(9) The FSC must–

- (a) notify ESMA of every authorisation granted by the FSC to an investment firm or market operator as an MTF and OTF; and
- (b) at ESMA's request, provide it with any information which the FSC has received under subsection (7).

(10) This section applies subject to any implementing technical standards adopted by the European Commission under Article 18(11) of MiFID.

#### **Specific requirements for MTFs.**

30.(1) An investment firm or market operator operating an MTF, in addition to meeting the requirements of sections 17, 20 and 29, must–

- (a) establish and implement non-discretionary rules for the execution of orders in the system; and
- (b) ensure that any rules governing access to an MTF established under section 29(2)(c) comply with the requirements of section 70(3).

(2) An investment firm or market operator operating an MTF must–

- (a) 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;
- (b) have effective arrangements to facilitate the efficient and timely finalisation of the transactions executed under its systems; and

- (c) 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.

(3) Sections 35, 39, 41(1) to (5), (8) to (15) and 42 do not apply to transactions which are concluded under the rules governing an MTF between–

- (a) its members or participants; or
- (b) the MTF and its members or participants in relation to the use of the MTF.

(4) Despite subsection (3) the members of, or participants in, an MTF must comply with sections 35, 39, 41 and 42 in respect of a client when they execute any order on behalf the client through the systems of an MTF.

(5) An investment firm or market operator operating an MTF is prohibited from executing client orders against proprietary capital or engaging in matched principal trading.

#### **Specific requirements for OTFs.**

31.(1) An investment firm or market operator operating an OTF must establish arrangements to prevent the execution of client orders in an OTF against the proprietary capital of the investment firm or market operator operating the OTF or from any entity that is part of the same group or legal person as the investment firm or market operator.

(2) An investment firm or market operator operating an OTF may engage in–

- (a) dealing on own account, other than matched principal trading, only with regard to sovereign debt instruments for which there is not a liquid market; and
- (b) matched principal trading in bonds, structured finance products, emission allowances and certain derivatives only where the client has consented to the process.

(3) Subject to subsection (4), an investment firm or market operator operating an OTF must establish and use matched principal trading arrangements.

(4) An investment firm or market operator operating an OTF must not use matched principal trading to execute client orders in an OTF in derivatives of a class that is subject to the clearing obligation under Regulation (EU) No 648/2012.

(5) An OTF must not–

- (a) be operated within a legal entity that also operates a systematic internaliser; or
- (b) be connected to–
  - (i) a systematic internaliser in a manner which enables orders in the OTF and orders or quotes in the systematic internaliser to interact; or
  - (ii) another OTF in a manner which enables orders in those OTFs to interact.

(6) An investment firm or market operator operating an OTF may engage another investment firm to carry out market making on the OTF on an independent basis but, for this purpose, an investment firm is not to be regarded as acting on an independent basis if it has close links with the investment firm or market operator operating the OTF.

(7) The execution of orders on an OTF must be carried out on a discretionary basis.

(8) An investment firm or market operator operating an OTF must exercise discretion only in either or both of the following circumstances–

- (a) when deciding to place or retract an order on the OTF they operate;
- (b) when deciding not to match a specific client order with other orders available in the systems at a given time, provided it is complying with specific instructions received from a client and with its obligations under section 41.

(9) An investment firm or market operator operating an OTF, in relation to a system that crosses client orders, may decide if, when and how much of two or more orders it wants to match within the system.

(10) An investment firm or market operator operating an OTF, in relation to a system that arranges transactions in non-equities, may facilitate negotiation between clients so as to bring together two or more potentially compatible trading interests in a transaction.

(11) Any steps taken under subsections (10) must be in accordance with subsections (1), (2)(b) and (3) to (6).

(12) Subsections (9) and (10) apply without limiting subsection (2)(a) or sections 29 and 41.

(13) The FSC may require an investment firm or market operator, when it seeks to be authorised for the operation of an OTF and from time to time, to provide the FSC with–

- (a) a detailed explanation of why the system does not correspond to and cannot operate as a regulated market, MTF, or systematic internaliser; and
- (b) a detailed description of how discretion will be exercised and, in particular–
  - (i) when an order to the OTF may be retracted; and
  - (ii) when and how two or more client orders will be matched within the OTF.

(14) An investment firm or market operator operating an OTF must provide the FSC with information explaining its use of matched principal trading.

(15) The FSC must monitor an investment firm's or market operator's engagement in matched principal trading to ensure that–

- (a) it continues to fall within the definition of that trading; and
- (b) its engagement in that trading does not give rise to conflicts of interest between the investment firm or market operator and its clients.

(16) The requirements of sections 35, 39, 41 and 42 apply to transactions concluded on an OTF.

*Operating conditions for investment firms: general provisions*

**Regular review of conditions for initial authorisation.**

32.(1) An investment firm must comply at all times with the conditions for initial authorisation in sections 6 to 17, 20 and 28 to 31.

(2) The FSC must establish appropriate arrangements to monitor the compliance by investment firms with their obligations under subsection (1), including requiring an investment firm to notify the FSC of any material changes to the conditions under which its authorisation was granted.

(3) In establishing monitoring arrangements under subsection (2) the FSC must have regard to any guidelines issued by ESMA under Article 21(2) of MiFID.

**General obligation in respect of on-going supervision.**

33.(1) The FSC must monitor the activities of investment firms in order to assess compliance with the operating conditions provided for in this Act.

(2) The FSC may require an investment firm to provide it with any information that the FSC considers necessary for the purpose of assessing the firm's compliance with those operating conditions.

(3) An investment firm which is required to provide any information under subsection (2) must do so without delay.

**Conflicts of interest.**

34.(1) An investment firm must take appropriate steps to identify and prevent or manage any conflicts of interest that arise in the course of providing investment or ancillary services—

- (a) within the firm;
- (b) between the firm and any third party, including—
  - (i) its managers, employees and tied agents; or
  - (ii) any person directly or indirectly linked to the firm by control;
- (c) between the firm and any client; or
- (d) between clients of the firm.

(2) The conflicts to which subsection (1) applies includes those which may arise from the firm's remuneration or incentive arrangements or receipt of any inducements from third parties.

(3) Where the arrangements made by an investment firm under section 17(3) to (9) to prevent conflicts of interest are insufficient to ensure, with reasonable confidence, that risks of damage to a client's interests will be



prevented, before it undertakes any business on the client's behalf the firm must clearly disclose to the client–

- (a) the general nature and source of the risk; and
- (b) the steps it has taken to mitigate those risks.

(4) Any disclosure under subsection (3) must–

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

(5) This section applies subject to any delegated acts adopted by the European Commission under Article 23(4) of MiFID.

*Investor protection: general principles*

**General principles and information to clients.**

35.(1) An investment firm, when providing investment or ancillary services to clients, must–

- (a) act honestly, fairly and professionally in the best interests of its clients; and
- (b) comply, in particular, with the principles set out in this section and in section 39.

(2) An investment firm which manufactures financial instruments for sale to clients must ensure that–

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

(3) An investment firm must–

- (a) understand the financial instruments it offers or recommends
- (b) assess the compatibility of the financial instruments with the needs of the clients to whom it provides investment services, taking account of the identified target market of end clients (as referred to in section 17(3) to (9)); and
- (c) ensure that financial instruments are offered or recommended only when this is in the interest of the client.

(4) Any information, including marketing communications, addressed by an investment firm to clients or potential clients must be fair, clear and not misleading and marketing communications must be clearly identified as such.

(5) An investment firm must provide appropriate information in good time to clients or potential clients about the firm and its services, financial instruments and proposed investment strategies, execution venues and all costs and related charges.

(6) The information which an investment firm provides under subsection (5) must include—

- (a) when investment advice is to be provided, in good time before it provides that advice—
  - (i) whether or not the advice is provided on an independent basis;
  - (ii) whether the advice is based on a broad or more restricted analysis of different types of financial instruments;
  - (iii) whether that range is limited to financial instruments issued or provided by entities having close links with the investment firm or any other close legal or economic relationship (such as a contractual relationship) which may pose a risk of impairing the independent basis of the advice provided;
  - (iv) whether the investment firm will provide the client with a periodic assessment of the suitability of the financial instruments recommended to that client;
- (b) in relation to financial instruments and proposed investment strategies—

- (i) appropriate guidance on and warnings of the risks associated with investments in those instruments or in respect of particular investment strategies; and
  - (ii) whether the financial instrument is intended for retail or professional clients, taking account of the identified target market in accordance with subsections (2) and (3);
- (c) in relation to costs and related charges, information relating to both investment and ancillary services, including—
- (i) the cost of advice, where relevant;
  - (ii) the cost of the financial instrument recommended or marketed to the client;
  - (iii) how the client may pay for it; and
  - (iv) any third-party payments.

(7) Information about costs and charges, including costs and charges in connection with the investment service and the financial instrument, which are not caused by the occurrence of underlying market risk—

- (a) must be aggregated to allow the client to understand the overall cost as well as the cumulative effect on return of the investment;
- (b) where applicable, must be provided to the client on a regular basis, at least annually, during the life of the investment; and
- (c) where the client so requests, must be provided as an itemised breakdown.

(8) Information under subsections (5) to (7), (13) and (14)—

- (a) must be provided in a comprehensible form and manner, so that 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; and
- (b) may be provided in a standardised format.

(9) The requirements of subsections (4) to (8) do not apply to an investment service which is offered as part of a financial product that is

already subject to information requirements relating to credit institutions and consumer credit imposed by European Union law other than MiFID.

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

- (a) must assess a sufficient range of financial instruments available on the market which are sufficiently diverse with regard to their type and issuers or product providers to ensure that the client's investment objectives can be suitably met;
- (b) must not limit the financial instruments assessed under paragraph (a) to those issued or provided by—
  - (i) the investment firm or entities having close links with the firm; or
  - (ii) other entities with which the investment firm has close legal or economic relationships, such as contractual relationships, which pose a risk of impairing the independent basis of the advice provided;
- (c) must not accept and retain any fee, commission or monetary or non-monetary benefit paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients.

(11) An investment firm, when providing portfolio management, must not accept and retain any fee, commission or monetary or non-monetary benefit paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients.

(12) Subsections (10)(c) and (11) do not apply to minor non-monetary benefits that—

- (a) are capable of enhancing the quality of service provided to a client;
- (b) are of a scale and nature that could not be judged to impair compliance with the investment firm's duty to act in the client's best interest; and
- (c) are clearly disclosed to the client.

(13) An investment firm is in breach of its obligations under section 34 and subsection (1) if in connection with the provision of an investment or ancillary service—

- (a) it pays any fee or commission or provides any non-monetary benefit to a party other than the client concerned (or a person acting on the client's behalf); or
- (b) it receives any fee, commission or non-monetary benefit from any party other than the client concerned (or a person acting on the client's behalf).

(14) Subsection (13) does not apply to a payment or benefit–

- (a) that is designed to enhance the quality of the relevant service to the client concerned;
- (b) that does not impair compliance with the investment firm's duty to act honestly, fairly and professionally in accordance with the best interest of its clients;
- (c) where the existence, nature and amount of the payment or benefit (or where the amount cannot be ascertained, the method of calculating that amount) has been disclosed to the client in a clear, comprehensive, accurate and understandable manner prior to the provision of the relevant investment or ancillary service; and
- (d) where applicable, the client has been informed of the mechanism for transferring the payment or benefit to the client.

(15) Subsection (13) does not apply to a payment or benefit which enables or is necessary for the provision of investment services, such as custody costs, settlement and exchange fees, regulatory levies or legal fees, and which by its nature cannot give rise to conflicts with an investment firm's duties to its clients.

(16) An investment firm which provides investment services to clients–

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

(17) Subject to subsection (18), when an investment service is offered together with another service or product as part of a package or as a condition for the same agreement or package, the investment firm must—

- (a) inform the client whether it is possible to buy the different components separately; and
- (b) if so, provide the client with information about the costs and charges for each component.

(18) Where the risks resulting from a package or agreement offered to a retail client are likely to differ from the risks associated with the components if bought separately, the investment firm must provide an adequate description of the different components of the package or agreement and the way in which their interaction modifies the risks associated with those components.

(19) In applying subsections (17) and (18), investment firms must have regard to any guidelines on the assessment and supervision of cross-selling practices issued by ESMA under Article 24(11) of MiFID.

(20) The Minister may by regulations specify additional requirements in respect of the matters in this section with which investment firms must comply.

(21) Requirements may only be imposed under subsection (20) in exceptional cases and must be proportionate, objectively justified and address specific risks to investor protection or market integrity which are of particular importance in the circumstances of the market structure in Gibraltar.

(22) The Minister must notify the European Commission of any intention to impose additional requirements under subsection (20), providing a justification for the additional requirements, without undue delay and in any event not less than two months before the relevant regulations come into operation.

(23) Any additional requirement imposed under this section must not restrict or otherwise affect the rights of investment firms under sections 50 to 53.

(24) This section applies subject to any delegated acts adopted by the European Commission under Article 24(13) of MiFID.

#### *Inducements*

#### **Inducements.**

36.(1) An investment firm must ensure that the requirements of this section and section 35(13) to (15) are met at all times where, in connection with the provision of an investment service or ancillary service, the firm—

- (a) pays or receives any fee or commission; or
- (b) provides or receives any non-monetary benefit.

(2) An investment firm must not regard a fee, commission or non-monetary benefit as being designed to enhance the quality of the relevant service to the client unless all of the following conditions are met—

- (a) it is justified by the provision of an additional or higher level service to the relevant client, which is proportionate to the level of any inducement received, such as the provision of—
  - (i) non-independent investment advice on and access to a wide range of suitable financial instruments including an appropriate number of instruments from third party product providers having no close links with the investment firm;
  - (ii) non-independent investment advice combined with either—
    - (aa) an offer to the client, at least on an annual basis, to assess the continuing suitability of the financial instruments in which the client has invested; or
    - (bb) another on-going service that is likely to be of value to the client such as advice about the suggested optimal asset allocation of the client; or
  - (iii) access, at a competitive price, to a wide range of financial instruments that are likely to meet the needs of the client, including an appropriate number of instruments from third party product providers having no close links with the recipient firm, together with the provision of either—
    - (aa) added-value tools, such as objective information tools helping the relevant client to take investment decisions or enabling the relevant client to monitor, model and adjust

the range of financial instruments in which the client has invested; or

(bb) periodic reports of the performance, costs and charges associated with the financial instruments;

(b) it does not directly benefit the recipient firm, its shareholders or employees without tangible benefit to the relevant client; and

(c) in relation to an on-going inducement, it is justified by the provision of an on-going benefit to the relevant client.

(3) A fee, commission or non-monetary benefit must not be regarded as acceptable if the provision of relevant services to the client is biased or distorted as a result of the fee, commission or non-monetary benefit.

(4) An investment firm must comply with subsections (2) and (3) for so long as it continues to pay or receive an ongoing fee, commission or non-monetary benefit.

(5) An investment firm must hold evidence that any fee, commission or non-monetary benefit paid or received by the firm is designed to enhance the quality of the relevant service to the client, including by maintaining–

(a) a list of all fees, commissions and non-monetary benefits received by the firm from third parties in relation to the provision of investment or ancillary services; and

(b) a record of how any fee, commission or non-monetary benefit paid or received by the investment firm enhances the quality of the services provided to the relevant client and the steps the firm has taken so as not to impair its duty to act honestly, fairly and professionally in accordance with the best interests of the client.

(6) An investment firm, before providing an investment or ancillary service, must disclose to the client any relevant payment or benefit which the firm has received from or paid to a third party.

(7) A disclosure under subsection (6) must be made in accordance with section 35(14)(c) and any non-monetary benefits received or paid by an investment firm in connection with a service provided to a client must be priced and disclosed separately (but minor non-monetary benefits may be described in a generic manner).



(8) Where an investment firm is unable to ascertain in advance the amount of any payment or benefit to be paid or received, it may comply with subsection (6) by—

- (a) before providing an investment or ancillary service, disclosing the method of calculating that amount to the client; and
- (b) providing the client with information on the exact amount of the payment or benefit once it has been received or paid.

(9) For as long as it receives or pays any on-going inducement, an investment firm must inform relevant clients on an individual basis at least once a year of the amount of any payment or benefit received or paid in relation to the investment or ancillary services provided to each of those clients, (but minor non-monetary benefits may be described in a generic manner).

(10) Where more than one investment firm is involved in a distribution channel, each firm providing an investment or ancillary service must comply with its own disclosure obligations to clients.

(11) In applying this section, investment firms must take account of the requirements relating to costs and associated charges in section 35(6)(c) and in Article 50 of Delegated Regulation (EU) 2017/56.

**Inducements: advice on an independent basis or portfolio management.**

37.(1) An investment firm that provides investment advice on an independent basis or portfolio management to a client must transfer to the client in full any fee, commission or monetary benefit which the firm receives from or on behalf of a third party in relation to those services.

(2) An investment firm must establish and implement a policy to ensure that—

- (a) any fee, commission or any monetary benefit of the kind mentioned in subsection (1) is allocated to the client concerned;
- (b) clients are informed, by means of a periodic statement or report, of any fee, commission or monetary benefit of that kind which has been transferred to them; and
- (c) those fees, commissions and monetary benefits are transferred to clients as soon as reasonably possible after the firm receives them.

(3) An investment firm providing investment advice on an independent basis or portfolio management must not accept a non-monetary benefit other than any of the following acceptable minor non-monetary benefits–

- (a) information or documentation relating to a financial instrument or investment service, whether of a generic nature or personalised to reflect the circumstances of an individual client;
- (b) written material from a third party that is–
  - (i) commissioned and paid for by a corporate issuer or potential issuer to promote a new issue by the company; or
  - (ii) contractually engaged and paid by an issuer to produce the material on an ongoing basis;

where the relationship is clearly disclosed in the material and the material is made available at the same time to any investment firms wishing to receive it or to the general public;

- (c) participation in conferences, seminars and other training events on the benefits and features of a specific financial instrument or an investment service;
- (d) hospitality of a reasonable and modest value, such as refreshments provided during a business meeting or at an event of the kind mentioned in paragraph (c); or
- (e) other minor, reasonable and proportionate non-monetary benefits which enhance the quality of service provided to a client and which, having regard to the scale and nature of–
  - (i) the overall level of benefits, are unlikely to influence the investment firm's behaviour in a manner that is detrimental to the interests of the relevant client; and
  - (ii) the benefits provided by one entity or group of entities, are unlikely to impair the investment firm's compliance with its duty to act in the best interest of the client.

(4) An investment firm must disclose any minor non-monetary benefits it has received before it provides a relevant investment or ancillary service to clients, but those benefits may be described in a generic manner.

**Inducements in relation to research.**

38.(1) Research which is provided by a third party to an investment firm that provides portfolio management or other investment or ancillary services to clients is not to be regarded as an inducement if it is received in return for–

- (a) direct payment by the investment firm out of its own resources; or
- (b) payment from a separate research payment account which is controlled by the investment firm and meets the conditions in subsection (2).

(2) The conditions are that–

- (a) the research payment account is funded by a specific research charge to clients, which must–
  - (i) only be based on a research budget set by the investment firm for the purpose of establishing the need for third party research in respect of investment services rendered to its clients; and
  - (ii) not be linked to the volume or value of transactions executed on behalf of the clients.
- (b) clients are provided with–
  - (i) information about the budgeted amount for research and the estimated research charge for each of them, before they receive any investment services; and
  - (ii) annual information about the actual research charge that each of them has incurred;
- (c) as part of establishing the research payment account and agreeing the research charge with its clients, the investment firm sets and regularly assesses a research budget as an internal administrative measure;
- (d) the investment firm is responsible for the research payment account; and
- (e) the investment firm regularly assesses the quality of the research purchased based on robust quality criteria and its ability to contribute to better investment decisions.

(3) An investment firm which operates a research payment account, upon request, must provide its clients or the FSC with a summary of–

- (a) the providers paid from the account;
- (b) the total amount paid to each provider over a defined period;
- (c) the benefits and services received by the investment firm, and
- (d) how the total amount spent from the account compares to the budget set by the firm for that period, noting any rebate or carry-over if residual funds remain in the account.

(4) An investment firm must–

- (a) agree with clients (which may be by means of the firm's investment management agreement or general terms of business)–
  - (i) the research charge as budgeted by the firm; and
  - (ii) the frequency with which the research charge will be deducted from the clients' resources over the year;
- (b) only increase its research budget and the related research charge after it has provided clear information to clients about any intended increase.

(5) The total amount of research charges received by an investment firm must not exceed its research budget and, where a firm has a surplus in its research payment account at the end of a period, it must make arrangements to rebate those funds to clients or offset them against the research budget and charge for the following period.

(6) Where an investment firm does not collect the research charge from clients separately but together with a transaction commission, it must–

- (a) indicate a separately identifiable research charge; and
- (b) comply with the conditions in subsection (2).

(7) For the purposes of subsection (2)(c), an investment firm's research budget–

- (a) must be managed solely by the firm, based upon a reasonable assessment of the need for third party research;

- (b) when used for the purchase of third party research, must be subject to appropriate controls and senior management oversight which ensure it is managed and used in the best interests of the firm's clients; and
  - (c) must be subject to controls which include a clear audit trail of the payments made to research providers and how those amounts were determined, having regard to the quality criteria in subsection (2)(e).
- (8) An investment firm's research budget and research payment account must not be used to fund internal research.
- (9) An investment firm may delegate the administration of its research payment account to a third party if the arrangement facilitates the purchase of third party research and payments to research providers in the name of the investment firm, in accordance with its instructions and without undue delay.
- (10) For the purposes of subsection (2)(e), an investment firm must—
- (a) establish all necessary elements in a written research policy and provide it to its clients; and
  - (b) consider the extent to which research purchased through the research payment account may benefit clients' portfolios, where relevant taking account of the investment strategies applicable to various types of portfolios and the approach the firm will take to allocating costs fairly to the various clients' portfolios.
- (11) An investment firm that provides execution services must establish separately identifiable charges—
- (a) for those execution services which only reflect the cost of executing the transaction; and
  - (b) for any other benefit or service which it provides to investment firms established in the EEA, which must not be influenced or conditioned by levels of payment for execution services.

*Provisions to ensure investor protection*

**Assessing suitability and appropriateness and reporting to clients.**

39.(1) An investment firm must ensure that individuals giving investment advice or information about financial instruments, investment services or ancillary services to clients on behalf of the investment firm possess the

necessary knowledge and competence to fulfil their obligations under this section and section 35.

(2) The FSC—

- (a) may require an investment firm to provide it with any information that the FSC considers necessary for the purpose of assessing the firm's compliance with subsection (1); and
- (b) must publish the criteria to be used for assessing whether an individual referred to in that subsection possesses the necessary knowledge and competence required by that subsection.

(3) An investment firm which is required to provide any information under subsection (2)(a) must do so without delay.

(4) An investment firm, when providing investment advice or portfolio management, must obtain the information which is necessary to enable it to recommend investment services and financial instruments that are suitable for the client or potential client, including the client's or potential client's—

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

(5) Where an investment firm provides investment advice recommending a bundled package of services or products to which sections 35(17) and (18) apply, it must ensure that the overall package is suitable for the client or potential client.

(6) An investment firm, when providing investment services other than those referred to in subsections (4) and (5), must ask the client or potential client to provide information regarding that person's knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded, to enable the investment firm—

- (a) to assess whether the investment service or product envisaged is appropriate for the client or potential client; and
- (b) where a package of services or products to which sections 35(17) and (18) apply is envisaged, to consider as part of the assessment whether the overall package is appropriate.

(7) An investment firm must provide a client or potential client with an appropriate warning (which may be in a standard form) where the investment firm—

- (a) considers that a product or service is not appropriate for the client or potential client, based upon the information received from the client or potential client under subsection (6); or
- (b) is unable to determine whether a product or service is appropriate for the client or potential client because—
  - (i) the client or potential client has not provided the information referred to in subsection (6); or
  - (ii) the information which the client or potential client has provided under that subsection includes insufficient information regarding their knowledge and experience.

(8) An investment firm may provide investment services that only consist of the execution or reception and transmission of client orders with or without ancillary services (other than granting credits or loans under Section B1 of Schedule 1 that are not within the existing credit limits of clients' loans, current accounts or overdraft facilities) without the need to obtain the information or make the determination provided for in subsection (6) where the following conditions are met—

- (a) the services relate to any of the following financial instruments—
  - (i) shares admitted to trading on a regulated market, an equivalent third-country market or an MTF, which are shares in companies and not shares in non-UCITS collective investment undertakings or shares that embed a derivative;
  - (ii) bonds or other forms of securitised debt admitted to trading on a regulated market, an equivalent third country market or an MTF, other than those that embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved;
  - (iii) money-market instruments, other than those that embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved;

- (iv) shares or units in UCITS, other than structured UCITS as referred to in the second subparagraph of Article 36(1) of Regulation (EU) No 583/2010;
  - (v) structured deposits, excluding those that incorporate a structure which makes it difficult for the client to understand the risk of return or the cost of exiting the product before term;
  - (vi) other instruments which are assessed as being non-complex financial instruments for the purposes of this paragraph;
- (b) the service is provided at the initiative of the client or potential client;
  - (c) the investment firm complies with its obligations under section 34; and
  - (d) the client or potential client has been clearly informed (which may be by means of a warning in a standard format) that–
    - (i) in providing the service, the investment firm is not required to assess the appropriateness of the financial instrument or service provided or offered to the client or potential client; and
    - (ii) that the client or potential client does not benefit from the corresponding protection of the relevant conduct of business rules.

(9) In subsection (8) an “equivalent third-country market” means a third country market which meets the requirements and procedure under the third and fourth subparagraphs of Article 25(4) of MiFID.

(10) An investment firm must establish a record that includes any document agreed between the investment firm and a client that sets out the rights and obligations of the parties and the other terms on which the investment firm will provide services to the client, and for this purpose the rights and duties of the parties to the contract may be incorporated by reference to other documents or legal texts.

(11) An investment firm, when providing investment advice but before a transaction is made, must provide the client with a suitability statement in a durable medium specifying the advice given and how that advice meets the preferences, objectives and other characteristics of the retail client.



(12) Where an agreement to buy or sell a financial instrument is concluded using a means of distance communication which prevents the prior delivery of the suitability statement, an investment firm may provide that statement immediately after the client is bound by the agreement if–

- (a) the investment firm has given the client the option of delaying the transaction until the suitability statement is received; and
- (b) the client has consented to receiving the suitability statement without undue delay after the conclusion of the transaction.

(13) An investment firm must provide a client with adequate reports in a durable medium on the service provided including–

- (a) periodic communications, taking into account the type and the complexity of financial instruments involved and the nature of the service provided to the client; and
- (b) where applicable, the costs associated with the transactions and services undertaken on behalf of the client.

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

(15) If a mortgage credit agreement is offered which requires the consumer to be provided with an investment service in relation to mortgage bonds issued to secure the financing of, and having identical terms as, the mortgage in order for the loan to be payable, refinanced or redeemed, that service is not also subject to the obligations set out in this section.

(16) This section must be applied–

- (a) subject to any delegated acts adopted by the European Commission under Article 25(8) of MiFID; and
- (b) having regard to any guidelines issued by ESMA under Article 25(9) to (11) of MiFID.

#### **Provision of services through another investment firm.**

40.(1) An investment firm (“the receiving firm”) may accept an instruction from another investment firm (“the instructing firm”) to provide investment or ancillary services on behalf of a client of the instructing firm and, in that event–

- (a) the receiving firm may rely upon–
  - (i) any client information provided to it by the instructing firm; and
  - (ii) any recommendation in respect of the service or transaction that has been provided to the client by the instructing firm; and
- (b) the instructing firm remains responsible for–
  - (i) the completeness and accuracy of the information provided by it to the receiving firm; and
  - (ii) the suitability for the client of the recommendation or advice it has provided to that client.

(2) The receiving firm is responsible for concluding the service or transaction in accordance with the relevant provisions of this Act, based upon any information or recommendation provided by the instructing firm.

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

41.(1) An investment firm, when executing orders, must take all reasonable steps to obtain the best possible result for its clients (the “best possible result”) taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order.

(2) Despite subsection (1), where an investment firm receives a specific instruction from a client in respect of the execution of an order, the investment firm must execute the order by following the specific instruction.

(3) Where an investment firm executes an order on behalf of a retail client, the best possible result must be determined in terms of the total consideration, representing the price of the financial instrument and the costs relating to execution, which must include all expenses incurred by the client which are directly related to the execution of the order, including execution venue fees, clearing and settlement fees and any other fees paid to third parties involved in the execution of the order.

(4) Where there is more than one venue on which an order for a financial instrument may be executed, for the purpose of delivering the best possible result, the results that would be achieved by executing the order on each of the execution venues that is capable of executing the order and is listed in the firm’s order execution policy must be assessed and compared, taking

account of the firm's commissions and the costs for executing the order on each of those venues.

(5) An investment firm must not receive any remuneration, discount or non-monetary benefit for routing client orders to a particular trading venue or execution venue which would be contrary to subsection (1) or sections 17(3) to (9), 34 or 35.

(6) An investment firm, following execution of a transaction on behalf of a client must inform the client where the order was executed and must provide periodic reports to clients which include details about the price, costs, speed and likelihood of execution for individual financial instruments.

(7) The following venues must make available to the public on an annual basis, without charge, data relating to the quality of execution of transactions on that venue—

- (a) a trading venue or systematic internaliser, in respect of financial instruments subject to the trading obligation in Articles 23 and 28 MiFIR; and
- (b) an execution venue, in respect of other financial instruments.

(8) An investment firm must establish and implement effective arrangements for complying with subsections (1) to (4) and, in particular, must establish and implement an order execution policy to allow it to obtain the best possible result.

(9) An order execution policy must include, in respect of each class of financial instruments and at least for those venues that enable the firm consistently to obtain the best possible result for the execution of client orders, information on—

- (a) the different venues where the investment firm executes its client orders; and
- (b) the factors affecting the choice of execution venue.

(10) An investment firm must obtain a client's prior consent to its order execution policy and, for that purpose, must provide clients with appropriate information about its order execution policy which explains clearly, in sufficient detail and in a way that can be easily understood by clients, how orders will be executed for clients by the firm.

(11) Where an investment firm's order execution policy provides that client orders may be executed outside of a trading venue, the investment firm must—

- (a) inform its clients about that possibility; and
- (b) obtain a client's express prior consent (whether for an individual transaction or more generally) before executing any order for the client outside of a trading venue.

(12) An investment firm which executes client orders must publish annually, for each class of financial instruments, a summary of its top five execution venues in terms of the volume of client orders executed in the preceding year and of the quality of execution obtained.

(13) An investment firm which executes client orders must–

- (a) monitor the effectiveness of its order execution policy and arrangements, in order to identify and, where appropriate, correct any deficiencies;
- (b) assess on a regular basis whether the execution venues included in its order execution policy provide for the best possible result or whether it needs to make changes to those execution arrangements, taking account of, among other things, the information published under subsections (6) and (12); and
- (c) notify clients with whom it has an ongoing client relationship of any material changes to its order execution policy or arrangements.

(14) An investment firm must be able to demonstrate–

- (a) to a client, at their request, that the investment firm has executed the client's orders in accordance with the firm's execution policy; and
- (b) to the FSC, at its request, that the investment firm has complied with this section.

(15) This section applies subject to any delegated acts or regulatory technical standards adopted by the European Commission under Article 27(9) or (10) of MiFID.

#### **Client order handling rules.**

42.(1) An investment firm which is authorised to execute orders on behalf of clients must implement procedures and arrangements which provide for–

- (a) the prompt, fair and expeditious execution of client orders, relative to other client orders or the trading interests of the firm; and
- (b) the execution of otherwise comparable client orders in accordance with the time of their reception by the firm.

(2) Unless a client expressly instructs otherwise, an investment firm must take measures to facilitate the earliest possible execution of a client limit order which, in respect of shares admitted to trading on a regulated market or traded on a trading venue, is not immediately executed under prevailing market conditions.

(3) The measures which an investment firm must take under subsection (2) are to make the client limit order public immediately and in a manner which is easily accessible to other market participants, and an investment firm may comply with that obligation by transmitting the client limit order to a trading venue.

(4) The FSC may waive the obligation to make public a limit order that is large in scale compared with normal market size, as determined under Article 4 of MiFIR.

(5) This section applies subject to any delegated acts adopted by the European Commission under Article 28(3) of MiFID.

#### *Tied agents*

#### **Obligations of investment firms when appointing tied agents.**

43.(1) An investment firm 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, placing financial instruments and providing advice in respect of the financial instruments and services offered by that investment firm.

(2) Where an investment firm appoints a tied agent, the firm remains fully and unconditionally responsible—

- (a) for any act or omission of the tied agent when acting on behalf of the investment firm; and
- (b) for ensuring that the tied agent discloses the capacity in which the agent is acting and the investment firm which the agent is representing when contacting or before dealing with any client or potential client.

- (3) An investment firm must monitor the activities of its tied agents and–
- (a) ensure that the firm continues to comply with this Act when acting through a tied agent; and
  - (b) take adequate measures to prevent the activities of the tied agent which are not covered by this Act from having a negative impact on the activities carried out by the agent on behalf of the investment firm.
- (4) A tied agent must not hold client money or financial instruments belonging to clients.
- (5) The FSC may supervise compliance by tied agents with this Act and any provisions made under it–
- (a) directly; or
  - (b) as part of the supervision of the investment firm for which the tied agent acts.
- (6) The Minister may by regulations make further provision in respect of the conduct and supervision of tied agents.

**Register of tied agents.**

- 44.(1) The FSC must establish and maintain a register of tied agents and–
- (a) a tied agent established in Gibraltar must be entered in the register; and
  - (b) an investment firm may appoint only tied agents who are entered in the register.
- (2) An application for registration under subsection (1)–
- (a) may only be made by the investment firm that proposes to appoint the person named in the application as its tied agent; and
  - (b) must–
    - (i) be made in the form and manner that the FSC may direct; and

- (ii) contain or be supported by any information that the FSC may require for the purpose of determining the application.

(3) The FSC must only admit a person to the register if the FSC is satisfied that the person—

- (a) is of sufficiently good repute; and
- (b) possesses the general, commercial and professional knowledge and competence which is appropriate in order to—
  - (i) deliver investment services or ancillary services; and
  - (ii) communicate accurately all relevant information regarding proposed services to clients or potential clients.

(4) If the FSC proposes to admit a person to the register it must give written notice to the person and to the investment firm concerned.

(5) If the FSC—

- (a) proposes to refuse a registration application, it must give a warning notice to the person and to the investment firm concerned; or
- (b) decides to refuse a registration application, it must give a decision notice to the person and to the investment firm concerned.

(6) The FSC must ensure that the register is kept up to date and made available online for consultation by the public.

**Revocation of registration.**

45.(1) The FSC may revoke a tied agent's registration where the tied agent—

- (a) does not make use of the registration within 12 months, expressly renounces the registration or has not provided any activity for the preceding six months;
- (b) has obtained the registration by making false statements or by any other irregular means;
- (c) no longer meets the conditions under which registration was granted;

- (d) has seriously and systematically infringed the provisions of this Act or MiFIR.

(2) If the FSC–

- (a) proposes to revoke a tied agent's registration, it must give a warning notice to the tied agent and the investment firm for which the tied agent acts; or
- (b) decides to revoke a tied agent's registration, it must give a decision notice to the tied agent and the investment firm for which the tied agent acts.

*Transactions with eligible counterparties.*

**Transactions executed with eligible counterparties.**

46.(1) An investment firm which is authorised to execute orders on behalf of clients, to deal on own account or to receive and transmit orders, may bring about or enter into transactions with eligible counterparties without being obliged, in respect of those transactions or any ancillary service directly relating to those transactions, to comply with the obligations under–

- (a) section 35(1) to (4) and (9) to (19);
- (b) section 39(1) to (10), (15) or (16);
- (c) section 41; or
- (d) section 42(1).

(2) An investment firm must act honestly, fairly and professionally in its relationship with an eligible counterparty and communicate in a way which is fair, clear and not misleading, taking account of the nature of the eligible counterparty and its business.

(3) For the purposes of this section each of the following entities (or an entity from a third country which is equivalent to any of those entities) is an eligible counterparty–

- (a) an investment firm;
- (b) a credit institution;
- (c) an insurance company;



- (d) a UCITS authorised in accordance with the UCITS Directive or its management company;
- (e) a pension fund or its management company;
- (f) another financial institution authorised or regulated under European Union law or the national law of an EEA State;
- (g) a national government or its corresponding office, including a public body that deals with the public debt at national level;
- (h) the Gibraltar Savings Bank or a central bank;
- (i) a supranational organisation; or
- (j) any other undertaking which meets any requirements for being treated as an eligible counterparty prescribed in Regulations made by the Minister.

(4) An entity's classification as an eligible counterparty under subsection (3) does not affect the right of that entity to request, either on a trade-by-trade basis or in general form, to be treated as a client whose business with the investment firm is subject to sections 35, 39, 41 and 42.

(5) An investment firm, when it enters into a transaction with an undertaking to which subsection (3)(j) applies must obtain the undertaking's express agreement to be treated as an eligible counterparty (which may be provided in respect of each transaction or generally).

(6) Where the prospective counterparties in a transaction are located in different jurisdictions, an investment firm must defer to the status of the other undertaking as determined by the law or measures of the jurisdiction in which that undertaking is established.

(7) Subsection (3) applies subject to any delegated acts adopted by the European Commission under Article 30(5) of MiFID.

(8) Any Regulations made by the Minister under subsection (3)(j) must—

- (a) specify pre-determined and proportionate requirements, which may include qualitative thresholds; and
- (b) take account of any delegated acts adopted by the European Commission under Article 30(5)(c) of MiFID.

*Market transparency and integrity*

**Monitoring compliance with MTF and OTF rules etc.**

47.(1) An investment firm or market operator operating an MTF or OTF must–

- (a) establish and maintain effective arrangements and procedures, relevant to the MTF or OTF, for the regular monitoring of the compliance by its members or participants or users with its rules; and
- (b) monitor the orders sent, cancellations and transactions undertaken by its members, participants or users under its systems, to identify–
  - (i) infringements of those rules;
  - (ii) disorderly trading conditions;
  - (iii) system disruptions in relation to a financial instrument; or
  - (iv) conduct which may indicate behaviour that is prohibited under the Market Abuse Regulation;
- (c) deploy the resource necessary to ensure that its monitoring under paragraph (b) is effective; and
- (d) inform the FSC immediately of–
  - (i) significant infringements of the MTF's or OTF's rules;
  - (ii) disorderly trading conditions;
  - (iii) system disruptions in relation to a financial instrument; or
  - (iv) conduct that may indicate behaviour that is prohibited under the Market Abuse Regulation.

(2) Subject to subsection (3), the FSC must communicate any information it receives under subsection (1)(d) to ESMA and the competent authorities in other EEA States.

(3) In relation to behaviour of the kind specified in subsection (1)(d)(iv), the FSC must be convinced that the behaviour is being or has been carried out before it communicates that information to ESMA and the competent authorities in other EEA States.

(4) An investment firm or market operator operating an MTF or OTF must—

- (a) without undue delay communicate any information under subsection (1)(d)(iv) to—
  - (i) the FSC; and
  - (ii) the Royal Gibraltar Police; and
- (b) fully assist those organisations in investigating and prosecuting market abuse occurring on or through its systems.

(5) This section applies subject to any delegated acts adopted by the European Commission under Article 31(4) of MiFID.

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

48.(1) An investment firm or market operator operating an MTF or OTF may suspend or remove from trading a financial instrument which no longer complies with the rules of the MTF or OTF except where suspension or removal would be likely to cause significant damage to the interests of investors or the orderly functioning of the market.

(2) Subsection (1) applies without affecting the FSC's power under section 85(2) to demand the suspension or removal of a financial instrument from trading.

(3) Where an investment firm or market operator operating an MTF or OTF suspends or removes a financial instrument from trading, it must also suspend or remove from trading any derivative referred to in Sections C4 to C10 of Schedule 1 that relates or is referenced to that financial instrument, where doing so is necessary to support the objectives of the suspension or removal of the underlying financial instrument.

(4) Where an investment firm or market operator operating an MTF or OTF suspends or removes a financial instrument (including any related derivative) from trading, it must—

- (a) inform the FSC; and
- (b) make its decision public.

(5) Where a suspension or removal arises from—

- (a) suspected market abuse;
- (b) a take-over bid; or
- (c) non-disclosure of inside information about the issuer or financial instrument, contrary to Articles 7 and 17 of the Market Abuse Regulation;

the FSC must require any regulated market, other MTF or OTF or systematic internaliser under its jurisdiction to suspend or remove that financial instrument or derivative from trading.

(6) Where the FSC is informed that a competent authority in an EEA State has suspended or removed a financial instrument (including any related derivative) from trading under a provision of its domestic law that corresponds to subsection (5), the FSC must require any regulated market, other MTF or OTF or systematic internaliser under its jurisdiction to suspend or remove that financial instrument or derivative from trading.

(7) Subsections (5) and (6) do not apply where the FSC considers that suspension or removal would be likely to cause significant damage to the interests of investors or the orderly functioning of the market.

(8) Where the FSC requires a financial instrument (including any related derivative) to be suspended or removed from trading under subsection (5), (6) or (11) to (16) or, under subsection (7) decides not to do so, it must—

- (a) inform ESMA and the competent authorities in other EEA States of its decision, which must include an explanation of any decision not to suspend or remove an instrument from trading; and
- (b) make its decision public.

(9) The notification requirements in subsections (4) and (8) apply (with any necessary modifications) when the suspension from trading of a financial instrument or related derivatives is ended or revoked.

(10) The requirements in subsections (4), (8) and (11) to (21) also apply if the FSC suspends or removes a financial instrument or related derivative from trading under section 85(2).

(11) If the FSC proposes to impose a requirement on any person or class of persons to suspend or remove a financial instrument from trading (a “requirement”) it must give notice to—

- (a) the person or each person in the class (as the case may be); and

- (b) the issuer of the financial instrument in question (if any).

(12) A notice under subsection (11) must—

- (a) be in writing;
- (b) give details of the requirement;
- (c) specify the date on which the requirement takes or took effect;
- (d) give the FSC's reasons for imposing the requirement; and
- (e) specify a reasonable period (which may not be less than 7 days) within which the person concerned may make representations.

(13) Where, within the period specified in subsection (12)(e) the FSC receives any representations in relation to a requirement, it must decide—

- (a) whether to impose or revoke the requirement (as the case may be); or
- (b) in the case of a requirement imposed on a class of persons, whether to revoke or vary its application to any member or part of that class.

(14) The FSC must give written notice of any decision under subsection (13) to—

- (a) any person who has made representations (the “applicant”); and
- (b) the issuer of the financial instrument in question (if any);

and, in the case of a requirement imposed on a class of persons, must publish notice of its decision on the FSC’s website.

(15) The FSC must give a warning notice to the applicant if the FSC proposes—

- (a) to impose or not to revoke the requirement; or
- (b) in the case of a requirement imposed on a class, to make a decision which would have the effect that the requirement continues to apply to the applicant (whether or not it would continue to apply to other members of the class).

(16) The FSC must give a decision notice to the applicant if the FSC decides—

- (a) to impose or not to revoke the requirement; or
- (b) in the case of a requirement imposed on a class, to make a decision which will have the effect that the requirement continues to apply to the applicant (whether or not it will continue to apply to other members of the class).

(17) At any time after the FSC has imposed a requirement on any person or class of persons, an application may be made to the FSC for the revocation or variation of the requirement by—

- (a) the person or any person in the class (as the case may be); or
- (b) the issuer of the financial instrument in question (if any).

(18) Where the FSC receives an application under subsection (17), it must decide—

- (a) whether to revoke the requirement; or
- (b) in the case of a requirement imposed on a class of persons, whether to revoke or vary its application to any member or part of that class.

(19) The FSC must give written notice of any decision under subsection (18) to

- (a) the person that made the application; and
- (b) the issuer of the financial instrument (if different);

and, in the case of a requirement imposed on a class of persons, must publish notice of its decision on the FSC's website.

(20) The FSC must give a warning notice to the person or issuer that made the application if the FSC proposes—

- (a) not to revoke the requirement; or
- (b) in the case of a requirement imposed on a class, not to revoke or vary its application to any member or part of that class;

and the FSC must also give a warning notice to the person if it proposes to make a decision which would have the effect that the requirement continues

to apply to the person (whether or not it would continue to apply to other members of the class).

(21) The FSC must give a decision notice to the person or issuer that made the application if the FSC decides—

- (a) not to revoke the requirement; or
- (b) in the case of a requirement imposed on a class, not to revoke or vary its application to any member or part of that class;

and the FSC must also give a decision notice to the person if it makes a decision which will have the effect that the requirement continues to apply to the person (whether or not it will continue to apply to other members of the class).

(22) This section applies subject to any regulatory technical standards, implementing technical standards or delegated acts adopted by the European Commission under Article 32(2), (3) or (4) of MiFID.

*SME growth markets*

**SME growth markets.**

49.(1) The operator of an MTF may apply to the FSC, in the form it may require, to have the MTF registered as an SME growth market.

(2) The FSC may register an MTF as an SME growth market if the FSC is satisfied that the MTF is subject to effective rules, systems and procedures which ensure that—

- (a) at least 50% of the issuers whose financial instruments are admitted to trading on the MTF are small and medium-sized enterprises at the time when the MTF is registered as an SME growth market and in any subsequent calendar year;
- (b) appropriate criteria are set for initial and ongoing admission to trading of financial instruments of issuers on the market;
- (c) on initial admission to trading of financial instruments on the market there is sufficient information published to enable investors to make an informed judgment about whether to invest in the financial instruments, either in—
  - (i) an appropriate admission document; or

- (ii) a prospectus, where the requirements of Directive 2003/71/EC apply in respect of a public offer being made in conjunction with the initial admission to trading of the financial instrument on the MTF;
  - (d) there is appropriate ongoing periodic financial reporting (such as the submission of audited annual reports) by or on behalf of an issuer on the market;
  - (e) issuers on the market, persons discharging managerial responsibilities and persons closely associated with them comply with the relevant requirements which apply to them under the Market Abuse Regulation;
  - (f) regulatory information concerning the issuers on the market is stored and disseminated to the public;
  - (g) there are effective systems and controls aimed at preventing and detecting market abuse on that market, as required under the Market Abuse Regulation.
- (3) The requirements in subsection (2)(a) to (g) apply without affecting–
- (a) the need for an investment firm or market operator operating an MTF to comply with any other obligation under this Act which is relevant to the operation of an MTF; or
  - (b) a decision by an investment firm or market operator operating an MTF to impose requirements in addition to those specified in that subsection.
- (4) The FSC may withdraw an MTF's registration as an SME growth market if–
- (a) the investment firm or market operator operating the MTF requests that its registration is withdrawn; or
  - (b) the MTF no longer meets the requirements of subsection (2).
- (5) If the FSC–
- (a) proposes to withdraw an MTF's registration as an SME growth market, it must give the investment firm or market operator a warning notice; and



- (b) decides to withdraw an MTF's registration as an SME growth market, it must give the investment firm or market operator a decision notice.

(6) Where the FSC registers or withdraws the registration of an MTF as an SME growth market, it must promptly inform ESMA of that decision.

(7) A financial instrument which is admitted to trading on an SME growth market may only be traded on another SME growth market where the issuer has been informed and has not objected and, in that event, the issuer is not subject to any obligation relating to corporate governance or disclosure with regard to that other SME growth market.

(8) In this section a "small and medium-sized enterprise" (SME) means a company that had an average market capitalisation of less than EUR 200,000,000 on the basis of end-year quotes for the previous three calendar years.

(9) This section applies subject to any delegated acts adopted by the European Commission under Article 33(8) of MiFID.

#### *Rights of investment firms*

#### **EEA firms providing services in Gibraltar.**

50.(1) In this section and in sections 51, 54 and 55, "EEA firm" means an investment firm authorised and supervised by the competent authority of another EEA State in accordance with MiFID and, in the case of a credit institution, the Capital Requirements Directive.

(2) An EEA firm—

- (a) may provide investment services or perform investment activities and ancillary services in Gibraltar if those services and activities are covered by its authorisation; but
- (b) may only provide ancillary services which are provided together with an investment service or activity.

(3) An EEA firm that intends to—

- (a) provide investment services or perform investment activities in Gibraltar for the first time; or
- (b) change the range of services or activities it provides in Gibraltar;

must inform the competent authority in its home State of that intention and provide that competent authority with the firm's proposed programme of operations stating, in particular, the investment services or investment activities and ancillary services that the firm intends to provide or perform, whether it intends to do so using tied agents established in its home State and, if so, the identity of those tied agents.

(4) In the case of an EEA firm which is a credit institution, its intention to use tied agents and their identity must be disclosed to the competent authority in its home State under subsection (3) regardless of whether those tied agents are established in that State.

(5) Where the FSC receives the information in subsection (3) and, where relevant, subsection (4) in respect of an EEA firm from the competent authority in another EEA State and it includes the identity of the tied agents that the EEA firm intends to use to provide investment services or perform investment activities in Gibraltar, the FSC must publish that information.

(6) An EEA firm may provide investment services and activities in Gibraltar under this section once the FSC has received from the competent authority in the firm's home State the information required under subsections (3) and (4) in respect of the firm.

(7) If an EEA firm proposes to change any of the information communicated in accordance with subsection (3) or (4), it must give written notice of that change to the competent authority in its home State at least one month before implementing the change.

(8) An EEA firm or a market operator operating an MTF or OTF from another EEA State, without further legal or administrative requirement, may provide appropriate arrangements in Gibraltar to facilitate access to and trading on those markets by remote users, members or participants established in Gibraltar.

(9) An EEA firm or a market operator operating an MTF or OTF from another EEA State must inform the competent authority of its home State that it intends to provide arrangements of the kind mentioned in subsection (8) in Gibraltar.

(10) This section applies subject to any regulatory technical standards or implementing technical standards adopted by the European Commission under Article 34(8) or (9) of MiFID.

(11) The FSC must not impose any additional requirements on EEA firms in respect of the matters covered by this Act.

**EEA firms establishing branches in Gibraltar.**

51.(1) An EEA firm may provide investment services and activities and ancillary services in Gibraltar in accordance with section 50(2) by–

- (a) establishing a branch in Gibraltar; or
- (b) using a tied agent established in Gibraltar.

(2) An EEA firm that proposes to provide services in Gibraltar in accordance with subsection (1) must notify the competent authority of its home State and provide it with the following information–

- (a) whether the EEA firm plans to establish a branch in Gibraltar or use tied agents established there;
- (b) a programme of operations which includes the investment services and activities and ancillary services to be offered;
- (c) where established, the organisational structure of the branch, an indication of whether the branch intends to use tied agents and, if so, the identity of those tied agents;
- (d) where tied agents are to be used but the EEA firm has not established a branch, a description of the intended use of the tied agents and an organisational structure, including reporting lines, indicating how the agents fit into the corporate structure of the EEA firm;
- (e) the address in Gibraltar from which documents may be obtained;
- (f) the names of those responsible for the management of the branch or the tied agents.

(3) Where an EEA firm uses in Gibraltar a tied agent established in Gibraltar, the tied agent–

- (a) must be assimilated to the EEA firm's branch in Gibraltar, where one is established; and
- (b) is in any event subject to the provisions of this Act relating to branches.

(4) An EEA firm's branch or tied agent may commence business in Gibraltar–

- (a) once the FSC notifies the firm that it may do so; or

- (b) if the FSC fails to notify the firm, two months after the competent authority in its home State sends the information required by Article 35(3) of MiFID to the FSC and the firm.

(5) The FSC is responsible for ensuring that the services provided by a branch of an EEA firm in Gibraltar comply with the obligations in–

- (a) Articles 24, 25, 27, 28, of MiFID; and
- (b) Articles 14 to 26 of MiFIR.

(6) The FSC may examine the arrangements of a branch in Gibraltar and request any change which is strictly needed to enable the FSC to enforce the obligations under the provisions mentioned in subsection (5) and measures adopted in relation to them with respect to the services and activities provided by the branch.

(7) The FSC must not impose any additional requirements on the organisation and operation of a branch in respect of the matters covered by this Act.

(8) Where an EEA firm has established a branch in Gibraltar, the competent authority of its home State, in the exercise of its responsibilities and after informing the FSC, may carry out on-site inspections of that branch.

(9) If an EEA firm proposes to change any of the information communicated in accordance with subsection (3) or (4), it must give written notice of that change to the competent authority in its home State at least one month before implementing the change.

(10) This section applies subject to any regulatory technical standards or implementing technical standards adopted by the European Commission under Article 35(11) or (12) of MiFID.

#### **Gibraltar firms providing services in other EEA States.**

52.(1) In this section and in section 53 “Gibraltar firm” means an investment firm authorised by the FSC and supervised in accordance with this Act and, in the case of a credit institution, the Financial Services (Capital Requirements Directive IV) Regulations 2013, but does not include an exempt local firm.

- (2) A Gibraltar firm–

- (a) may provide investment services or perform investment activities and ancillary services in another EEA State if those services and activities are covered by its authorisation under this Act; but
- (b) may only provide ancillary services which are provided together with an investment service or investment activity.

(3) A Gibraltar firm that intends to—

- (a) provide investment services or perform investment activities in another EEA State for the first time; or
- (b) change the range of services or activities it provides or performs in another EEA State;

must inform the FSC of that intention and provide the FSC with the firm's proposed programme of operations stating, in particular, the investment services or investment activities and ancillary services that the firm intends to provide or perform, whether it intends to do so using tied agents established in Gibraltar and, if so, the identity of those tied agents.

(4) In the case of a Gibraltar firm which is a credit institution, its intention to use tied agents and their identity must be disclosed to the FSC under subsection (3) regardless of whether those tied agents are established in Gibraltar.

(5) Where the FSC receives information under subsection (3) and, where relevant, subsection (4) in respect of a Gibraltar firm it must, within one month of receiving it, provide that information to the competent authority in the host State.

(6) A Gibraltar firm may provide investment services and activities in the host State once the competent authority in that State has received from the FSC the information required under subsections (3) and (4) in respect of the firm.

(7) If a Gibraltar firm proposes to change any of the information communicated in accordance with subsection (3) or (4), it must give written notice of that change to the FSC at least one month before implementing the change.

(8) A Gibraltar firm or a market operator operating an MTF or OTF from Gibraltar may provide appropriate arrangements in another EEA State to facilitate access to and trading on those markets by remote users, members or participants established in that EEA State, but must promptly inform the FSC if it intends to provide arrangements of that kind.

(9) Where Gibraltar is the home State of an MTF, at the request of the competent authority of the MTF's host State, the FSC must without undue delay communicate the identity of the remote members or participants of the MTF established in that State to that competent authority.

(10) This section applies subject to any regulatory technical standards or implementing technical standards adopted by the European Commission under Article 34(8) or (9) of MiFID.

**Gibraltar firms establishing branches in other EEA States.**

53.(1) A Gibraltar firm may provide investment services and activities and ancillary services in another EEA State in accordance with section 52(2) by–

- (a) establishing a branch in that EEA State; or
- (b) using a tied agent established in that EEA State.

(2) A Gibraltar firm that proposes to provide services in another EEA State in accordance with subsection (1) must notify the FSC and provide it with the following information–

- (a) whether the firm plans to establish a branch in that State or use tied agents established there;
- (b) a programme of operations which includes the investment services and activities and ancillary services to be offered;
- (c) where established, the organisational structure of the branch, an indication of whether the branch intends to use tied agents and, if so, the identity of those tied agents;
- (d) where tied agents are to be used but the firm has not established a branch, a description of the intended use of the tied agents and an organisational structure, including reporting lines, indicating how the agents fit into the corporate structure of the Gibraltar firm;
- (e) the address in that State from which documents may be obtained;
- (f) the names of those responsible for the management of the branch or the tied agents.

(3) Where a Gibraltar firm uses in an EEA State a tied agent established in that EEA, the tied agent–

- (a) must be assimilated to the Gibraltar firm's branch in that EEA State, where one is established; and
- (b) is in any event subject to the provisions of MiFID relating to branches.

(4) Unless the FSC has reason to doubt the adequacy of the administrative structure or financial situation of a Gibraltar firm that provides information to the FSC under subsection (2), taking into account the services and activities that the firm intends to provide, within three months of receiving the information the FSC must—

- (a) send to the competent authority of the host State—
  - (i) that information, and
  - (ii) details of the accredited compensation scheme of which the Gibraltar firm is a member in accordance with Directive 97/9/EC; and
- (b) inform the Gibraltar firm that it has done so.

(5) If the FSC decides not to communicate the information which it has received from a Gibraltar firm under subsection (2) to the competent authority of the host State, the FSC must give reasons for that decision to the Gibraltar firm within three months of receiving the information.

(6) A Gibraltar firm's branch or tied agent may commence business in an EEA State—

- (a) once the competent authority in that State notifies the firm that it may do so; or
- (b) if the competent authority in that State fails to do so, two months after the FSC sends that competent authority the information required under subsection (4).

(7) Where a Gibraltar firm has established a branch in another EEA State the FSC, in the exercise of its responsibilities and after informing the competent authority of the host State, may carry out on-site inspections of that branch.

(8) If an EEA firm proposes to change any of the information communicated in accordance with subsection (2), it must give written notice of that change to the FSC at least one month before implementing the

change and the FSC must inform the competent authority of the host State of that change.

(9) This section applies subject to any regulatory technical standards or implementing technical standards adopted by the European Commission under Article 35(11) or (12) of MiFID.

**Access to regulated markets.**

54.(1) An EEA firm which is authorised to execute client orders or to deal on own account has the right of membership or access to regulated markets established in Gibraltar by—

- (a) setting up a branch in Gibraltar; or
- (b) becoming a remote member of or having remote access to the regulated market without having to be established in Gibraltar, 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 requirement in respect of matters covered by this Act may be imposed on an EEA firm exercising a right conferred by subsection (1).

**Access to CCP, clearing and settlement facilities and right to designate settlement system.**

55.(1) An EEA firm has the right of direct and indirect access to CCP, clearing and settlement systems in Gibraltar for the purposes of finalising or arranging the finalisation of transactions in financial instruments.

(2) That direct and indirect access by an EEA firm to those facilities must—

- (a) be subject to the same non-discriminatory, transparent and objective criteria that apply to local members or participants; and
- (b) not restrict the use of those facilities to the clearing and settlement of transactions in financial instruments undertaken on a trading venue in Gibraltar.

(3) A regulated market in Gibraltar must offer all its members or participants the right to designate the system for the settlement of transactions in financial instruments undertaken on that regulated market, subject to the following conditions—



- (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) the FSC's agreement that technical conditions for settlement of transactions concluded on the regulated market through a settlement system other than that designated by the regulated market allow the smooth and orderly functioning of financial markets.

(4) Any assessment by the FSC under subsection (3)(b) does not affect the competency of any other authority responsible for the oversight or supervision of settlement systems and, to avoid the undue duplication of control, in conducting an assessment under that subsection the FSC must take account of any oversight or supervision already exercised by another authority.

(5) This section applies without affecting Titles III to V of Regulation (EU) No 648/2012.

#### **Central counterparty, clearing and settlement arrangements for MTFs.**

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

(2) The FSC may prohibit the use of a CCP, clearing house or settlement system in another EEA State by an investment firm or market operator operating an MTF in Gibraltar if doing so is demonstrably necessary in order to maintain the orderly functioning of the MTF, taking account of the conditions for settlement systems established under section 55(3).

#### *Provision of investment services and activities by third-country firms through the establishment of a branch*

#### **Third-country firm to establish branch.**

57.(1) A third-country firm that intends to provide investment services or perform investment activities (with or without any ancillary services) in Gibraltar must establish a branch in Gibraltar.

(2) A third-country firm that intends to establish a branch in Gibraltar must submit an application to the FSC, in the form it may require, containing—

- (a) the name of the authority responsible for supervising the firm in the third country concerned and, where more than one authority is responsible for its supervision, the respective areas of competence of those authorities;
- (b) relevant details of the firm, as required by the FSC, which may include its name, legal form, registered office and address, members of the management body, and relevant shareholders;
- (c) a programme of operations setting out the investment services or investment activities and ancillary services to be provided or performed by the branch, its organisational structure and a description of any outsourcing to third parties of essential operating functions;
- (d) the names of the persons responsible for the management of the branch and the relevant documents to demonstrate compliance with the requirements mentioned in section 11(1); and
- (e) information about the initial capital at free disposal of the branch.

**Grant of authorisation.**

58.(1) The FSC may only authorise a third-country firm to establish a branch in Gibraltar if the FSC is satisfied that—

- (a) the conditions in subsection (2) are met; and
- (b) the branch will be able to comply with subsection (3).

(2) Those conditions are—

- (a) the services which the branch of the third-country firm intends to provide—
  - (i) are subject to authorisation and supervision in the third country where the firm is established; and
  - (ii) the firm is properly authorised to provide those services in that country, having regard to any FATF recommendations in the context of anti-money laundering and countering the financing of terrorism;
- (b) the branch has sufficient initial capital at its disposal;

- (c) one or more persons are appointed to be responsible for the management of the branch and they all comply with the requirements mentioned in section 11(1);
- (d) the firm belongs to an investor compensation scheme authorised or recognised in accordance with Directive 97/9/EC;
- (e) adequate arrangements exist for co-operation between the FSC and the supervisory authorities of the third country, including provisions regulating the exchange of information for the purpose of preserving the integrity of the market and protecting investors;
- (f) the third country where the firm is established has signed an agreement with Gibraltar which complies with the standards in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including, if any, multilateral tax agreements.

(3) A branch of a third-country firm authorised in accordance with subsection (1) is subject to the supervision of the FSC and must comply with the obligations laid down in–

- (a) sections 17, 28 to 31, 34, 35, 39, 41, 42(1) and 46 to 48;
- (b) Articles 3 to 26 of MiFIR and any measures adopted by the European Commission under those provisions; and
- (c) any conditions imposed on the authorisation under section 85(3).

(4) If the FSC proposes to grant an authorisation to a third-country firm it must give written notice to the firm.

(5) If the FSC–

- (a) proposes to refuse an authorisation application or grant it subject to conditions, the FSC must give the third-country firm a warning notice; and
- (b) decides to refuse an authorisation application or grant it subject to conditions, the FSC must give the third-country firm a decision notice.

(6) The FSC must inform a third-country firm, within six months of a completed application being submitted to the FSC, whether or not authorisation has been granted.

(7) The FSC must not–

- (a) impose any additional requirements on the organisation and operation of the branch of a third-country firm in respect of the matters covered by MiFID; or
- (b) treat branches of third-country firms more favourably than EEA firms.

**Services provided at the client's exclusive initiative.**

59.(1) The requirement under section 57(1) to establish a branch does not apply to a third-country firm providing an investment service or activity which is initiated at the client's exclusive initiative by a retail client or professional client (within the meaning of Section II of Schedule 2) established or situated in Gibraltar.

(2) Subsection (1) extends to the relationship between a third-country firm and a client specifically relating to the provision of the investment service or activity in question, but does not entitle a third-country firm to market new categories of investment services or products to a client established or situated in Gibraltar otherwise than through a branch.

**Withdrawal of authorisation.**

60.(1) The FSC may withdraw an authorisation issued to a third-country firm under section 58 where the firm–

- (a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has performed no investment service or activity for the preceding six months;
- (b) obtained the authorisation by making false statements or by other irregular means;
- (c) no longer meets the conditions under which authorisation was granted;
- (d) has seriously and systematically infringed any provision made by or under this Act which governs the operating conditions for investment firms and applies to third-country firms; or
- (e) falls within any case where withdrawal, in respect of matters outside the scope of MiFID, is provided for in regulations made by the Minister.

(2) If the FSC—

- (a) proposes to withdraw an authorisation, it must give the third-country firm a warning notice; and
- (b) decides to withdraw an authorisation, it must give the third-country firm a decision notice.

### **PART 3 REGULATED MARKETS**

#### **Authorisation and applicable law.**

61.(1) The FSC must—

- (a) only authorise as a regulated market those systems which comply with this Part; and
- (b) only issue a regulated market authorisation where it is satisfied that both the market operator and the systems of the regulated market comply with this Part.

(2) The Minister may by regulations prescribe how the obligations imposed on a market operator under this Act are to be allocated between a regulated market and a market operator where a regulated market is a legal person managed or operated by a market operator other than that regulated market.

(3) The FSC may only issue an authorisation under this Part where the market operator has provided the FSC with all the information it requires (including a programme of operations setting out, among other things, the types of business envisaged and the organisational structure) to satisfy itself that the regulated market has established, at the time of initial authorisation, all the necessary arrangements to meet its obligations under this Part.

(4) An authorisation under this Part is issued subject to—

- (a) the condition that a market operator must perform tasks relating to the organisation and operation of the regulated market under the supervision of the FSC; and
- (b) any conditions imposed under section 85(3).

(5) If the FSC proposes to grant an authorisation application it must give written notice to the applicant.

(6) If the FSC—

- (a) proposes to refuse an authorisation application or grant it subject to conditions, the FSC must give the applicant a warning notice; and
- (b) decides to refuse an authorisation application or grant it subject to conditions, the FSC must give the applicant a decision notice.

(7) The FSC must–

- (a) keep under regular review the compliance of regulated markets with this Part; and
- (b) monitor regulated markets to ensure that, at all times, they comply with the conditions for initial authorisation under this Part.

(8) A market operator authorised under this Part–

- (a) must ensure that the regulated market it manages complies with the requirements of this Part; and
- (b) may exercise the rights that correspond to the regulated market that it manages by virtue of this Act.

(9) Without limiting the Market Abuse Regulation, trading conducted under the systems of a regulated market in Gibraltar is governed by the law of Gibraltar.

(10) The FSC may withdraw an authorisation issued under this section where a regulated market–

- (a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has not operated for the preceding six months;
- (b) has obtained the authorisation by making false statements or by any other irregular means;
- (c) no longer meets any conditions under which authorisation was granted;
- (d) has seriously and systematically infringed this Act or MiFIR; or
- (e) falls within any case where withdrawal is provided for in regulations made by the Minister.

(11) If the FSC—

- (a) proposes to withdraw a regulated market's authorisation, it must give the market operator a warning notice; and
- (b) decides to withdraw a regulated market's authorisation, it must give the market operator a decision notice.

(12) The FSC must inform ESMA if an authorisation is withdrawn under subsection (10).

(13) A person who provides any service or activity of a regulated market in contravention of subsection (1) commits an offence and is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding seven years, to a fine or both;
- (b) on summary conviction, to a fine not exceeding £25,000.

(14) Subsection (13) does not apply to a person who is exempt from the need for authorisation under subsection (1).

**Requirements for the management body of a market operator.**

62.(1) The management body of a market operator must at all times be comprised of members (“management body members”)—

- (a) each of whom—
  - (i) is of sufficiently good repute; and
  - (ii) possesses sufficient knowledge, skills and experience to perform their duties; and
- (b) who collectively have an adequately broad range of experience.

(2) The members of a management body must, in particular, fulfil the requirements of subsections (3) to (5).

(3) Management body members must commit sufficient time to perform their functions and the number of directorships in any legal entity that a management body member may hold at the same time—

- (a) must take account of individual circumstances and the nature, scale and complexity of the market operator's activities; and

(b) where applicable, must not exceed the limit specified in subsection (6).

(4) A management body must possess adequate collective knowledge, skills and experience to be able to understand the market operator's activities, including the main risks.

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

(6) A management body member of a market operator that is significant in terms of its size, internal organisation and the nature, scope and complexity of its activities must not at the same time hold more than either—

- (a) one executive directorship and two non-executive directorships; or
- (b) four non-executive directorships.

(7) Subsection (6) does not apply where the management body member represents the government and for purposes of that subsection—

- (a) an executive or non-executive directorship held within the same group or undertakings where the market operator owns a qualifying holding is to be considered a single directorship; and
- (b) directorships in organisations which do not pursue predominantly commercial objectives are exempt from the limit on the number of directorships a management body member may hold.

(8) The FSC—

- (a) may permit a management body member to hold one non-executive directorship beyond the limit specified in subsection (4)(a) or (b); and
- (b) must inform ESMA of any permissions granted under this subsection.

(9) A market operator must devote adequate resources to the induction and training of management body members.

(10) A market operator which is significant in terms of its size, internal organisation and the nature, scope and complexity of its activities must



establish a nomination committee, composed of management body members who do not perform any executive function in the market operator concerned, to carry out the following–

- (a) identify and recommend, for approval by the management body or in general meeting, candidates to fill management body vacancies;
- (b) assess annually the structure, size, composition and performance of the management body and make recommendations to the management body with regard to any changes;
- (c) assess annually the knowledge, skills and experience of individual members of the management body and of the management body collectively, and report to the management body accordingly;
- (d) periodically review the policy of the management body for selection and appointment of senior management and make recommendations to the management body.

(11) In performing its duties under subsection (10)(a), a nomination committee must–

- (a) evaluate the balance of knowledge, skills, diversity and experience of the management body;
- (b) prepare a description of the roles and capabilities expected for a particular appointment and an assessment of the time commitment expected of any person appointed;
- (c) set–
  - (i) a target for the representation of the gender which is under-represented on the management body; and
  - (ii) a policy on how to increase the number of individuals of that gender on the management body, in order to meet that target.

(12) In performing its duties under subsection (10), a nomination committee must, to the extent possible and on an ongoing basis, take account of the need to ensure that the management body's decision making is not dominated by an individual or small group of individuals in a manner that is detrimental to the interests of the market operator as a whole.

(13) In performing its duties, a nomination committee must be able to use any resources it considers appropriate, including external advice.

(14) A market operator and its nomination committee must use a broad set of qualities and competences when recruiting management body members and, for that purpose, must establish a policy which promotes diversity on the management body.

(15) The management body of a market operator must–

- (a) define and oversee the implementation of governance arrangements that ensure effective and prudent management of the market operator, including the segregation of duties and the prevention of conflicts of interest, and in a manner that promotes the integrity of the market; and
- (b) monitor and periodically assess the effectiveness of those governance arrangements and take appropriate steps to address any deficiencies.

(16) A market operator must ensure that its management body members have adequate access to the information and documents which are needed to oversee and monitor management decision-making.

(17) Subject to subsection (18) the FSC must refuse to authorise a regulated market if–

- (a) it is not satisfied that the members of its management body are of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their functions; or
- (b) there are objective and demonstrable grounds for believing that the management body may pose a threat to its effective, sound and prudent management of the market operator and to the adequate consideration of the integrity of the market.

(18) In relation to an application for the authorisation of a regulated market, the FSC must regard the requirements of subsection (1) to be met by a person or persons who effectively direct the business and operations of a regulated market which is already authorised in accordance with MiFID.

(19) A market operator must–

- (a) notify the FSC of the identity of its management body members and of any changes of membership; and

- (b) provide the FSC with any information it may require to assess whether the market operator complies with subsections (1) to (14).

(20) This section must be applied having regard to any guidelines issued by ESMA under Article 45(9) of MiFID.

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

63.(1) Any person who is in a position to exercise, directly or indirectly, significant influence over the management of the regulated market must be approved by the FSC as being suitable to do so.

(2) The operator of a regulated market must—

- (a) provide the FSC with, and make public, information regarding the ownership of the regulated market or the market operator, and in particular, the identity and scale of interests of any parties in a position to exercise significant influence over the management; and
- (b) inform the FSC of, and make public, any transfer of ownership which gives rise to a change in the identity of any person exercising significant influence over the operation of the regulated market.

(3) The operator of a regulated market must provide the FSC with any information it may require to assess whether a person is in a position to exercise significant influence over the management of the regulated market and, if so, whether that person is suitable to do so.

(4) The FSC must refuse to approve proposed changes to the controlling interests of a regulated market or the market operator where there are objective and demonstrable grounds for believing that they would pose a threat to the sound and prudent management of the regulated market.

(5) If the FSC—

- (a) proposes to refuse to approve a person as being suitable to exercise significant influence over the management of a regulated market, it must give a warning notice to the person and to the market operator; and
- (b) decides to refuse to approve a person as being suitable to exercise significant influence over the management of a

regulated market, it must give a decision notice to the person and to the market operator.

**Organisational requirements.**

64.(1) A regulated market must—

- (a) have arrangements to identify clearly and manage the potential adverse consequences, for the operation of the regulated market or for its members or participants, of any conflicts of interest between the interest of the regulated market, its owners or its market 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 FSC;
- (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 the 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.

(2) A market operator must not execute client orders against proprietary capital or engage in matched principal trading on any regulated market it operates.

**Systems resilience, circuit breakers and electronic trading.**

65.(1) A regulated market must have effective systems, procedures and arrangements in place to ensure that its trading systems–

- (a) are resilient;
- (b) have sufficient capacity to deal with peak order and message volumes;
- (c) are able to ensure orderly trading under conditions of severe market stress;
- (d) are fully tested to ensure that the conditions in paragraphs (a) to (c) are met; and
- (e) are subject to effective business continuity arrangements which ensure continuity of its services if there is any failure of its trading systems.

(2) A regulated market must have in place–

- (a) written agreements with all investment firms pursuing a market making strategy on the regulated market;
- (b) schemes to ensure that a sufficient number of investment firms participate in such agreements which require them to post firm quotes at competitive prices with the result of providing liquidity to the market on a regular and predictable basis, where such a requirement is appropriate to the nature and scale of the trading on that regulated market.

(3) A written agreement under subsection (2) must at least specify–

- (a) the obligations of the investment firm in relation to the provision of liquidity and where applicable any other obligation arising from participation in the scheme referred to in subsection (2)(b);
- (b) any incentives in terms of rebates or otherwise offered by the regulated market to an investment firm so as to provide liquidity to the market on a regular and predictable basis and, where applicable, any other rights accruing to the investment firm as a result of participation in that scheme.

(4) A regulated market must–

- (a) monitor and enforce compliance by investment firms with the requirements of such binding written agreements;

- (b) inform the FSC, in the manner and form it may require, about the content of such binding written agreements; and
- (c) provide the FSC, at its request, with any further information which is necessary to enable the FSC to satisfy itself of compliance by the regulated market with this subsection and subsection (3).

(5) A regulated market must have in place effective systems, procedures and arrangements to reject orders that exceed pre-determined volume and price thresholds or are clearly erroneous.

(6) A regulated market must—

- (a) be able—
  - (i) to halt temporarily or constrain trading if there is a significant price movement in a financial instrument on that market or a related market during a short period; and
  - (ii) in exceptional cases, to cancel, vary or correct any transaction; and
- (b) ensure that the parameters for halting trading are appropriately calibrated in a manner which—
  - (i) takes account of the liquidity of different asset classes and sub-classes and the nature of the market model and types of users; and
  - (ii) is sufficient to avoid significant disruptions to the orderliness of trading.

(7) Where a regulated market which is material in terms of the liquidity of a financial instrument halts the trading of that instrument, that trading venue must have the necessary systems and procedures in place to ensure that it notifies competent authorities, in order for them to coordinate a market-wide response and determine whether it is appropriate to halt trading on other venues on which the financial instrument is traded until trading resumes on the original market.

(8) A regulated market must report its parameters for halting trading and any material changes to those parameters to the FSC in a consistent and comparable manner and in the form the FSC may require.

(9) The FSC must report any information it receives under subsection (8) to ESMA.

(10) A regulated market must have in place effective systems, procedures and arrangements to ensure that algorithmic trading systems cannot create or contribute to disorderly trading conditions on the market and to manage any disorderly trading conditions which do arise from such algorithmic trading systems, including systems to—

- (a) limit the ratio of unexecuted orders to transactions that may be entered into the system by a member or participant;
- (b) be able to slow down the flow of orders if there is a risk of its system capacity being reached; and
- (c) limit and enforce the minimum tick size that may be executed on the market.

(11) The systems, procedures and arrangements put in place under subsection (9) must include requirements for the regulated market's members or participants to carry out appropriate testing of algorithms and providing environments to facilitate such testing.

(12) A regulated market that permits direct electronic access must—

- (a) have in place effective systems, procedures and arrangements to ensure that—
  - (i) members or participants are only permitted to provide those services if they are investment firms authorised under MiFID or credit institutions authorised under the Capital Requirements Directive;
  - (ii) appropriate criteria are set and applied regarding the suitability of persons to whom that access may be provided; and
  - (iii) the member or participant retains responsibility for orders and trades executed using that service in relation to the requirements of this Act;
- (b) set appropriate standards regarding risk controls and thresholds on trading by persons using direct electronic access;
- (c) be able to—

- (i) distinguish orders or trading by a person using direct electronic access from other orders or trading by the member or participant which provided that access; and
- (i) if necessary, stop orders or trading by that person; and
- (d) have arrangements in place to suspend or terminate the provision of direct electronic access by a member or participant to a client in the event of non-compliance.

(13) A regulated market must ensure that its rules on co-location services are transparent, fair and non-discriminatory.

(14) A regulated market must–

- (a) ensure that its fee structures, including execution fees, ancillary fees and any rebates–
  - (i) are transparent, fair and non-discriminatory; and
  - (ii) do not create incentives to place, modify or cancel orders or to execute transactions in a way which contributes to disorderly trading conditions or market abuse; and
- (b) impose market making obligations in individual shares or a suitable basket of shares in exchange for any rebates that are granted.

(15) The Minister may by regulations provide for regulated markets to be authorised to–

- (a) adjust their fees for cancelled orders according to the length of time for which the order was maintained and to calibrate the fees to each financial instrument to which they apply;
- (b) impose a higher fee which reflects the additional burden on system capacity–
  - (i) for placing an order that is subsequently cancelled than an order which is executed;
  - (ii) on participants placing a high ratio of cancelled orders to executed orders; and
  - (iii) on those operating a high-frequency algorithmic trading technique.



(16) A regulated market must–

- (a) be able to identify, by means of flagging from members or participants–
  - (i) orders generated by algorithmic trading;
  - (ii) the different algorithms used for creating the orders; and
  - (iii) the relevant persons initiating those orders;
- (b) provide that information to the FSC at its request.

(17) For the purpose of enabling the FSC to monitor trading, a regulated market, when required to do so by the FSC, must–

- (a) provide the FSC with data relating to the regulated market's order book; or
- (b) give the FSC access to the order book.

(18) This section must be applied–

- (a) subject to any regulatory technical standards adopted by the European Commission under Article 48(12) of MiFID; and
- (b) having regard to any guidelines issued by ESMA under Article 48(13) of MiFID.

**Tick sizes.**

66.(1) A regulated market must adopt a tick size regime for–

- (a) shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments (and in doing so must comply with any relevant adopted standard); and
- (b) any other financial instrument for which there is an adopted standard.

(2) Tick size regimes must–

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

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

(3) In subsection (1) a reference to an adopted standard is to regulatory technical standards developed by ESMA and adopted by the European Commission under–

(a) in the case of subsection (1)(a), Article 49(3) of MiFID; and

(b) in the case of subsection (1)(b), Article 49(4) of MiFID.

#### **Synchronisation of business clocks.**

67.(1) All trading venues and their members or participants must synchronise the business clocks they use to record the date and time of any reportable event.

(2) Clocks to which subsection (1) applies must be synchronised to the level of accuracy specified in regulatory technical standards developed by ESMA and adopted by the European Commission under Article 50(2) of MiFID.

#### **Admission of financial instruments to trading.**

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

(2) Those rules must ensure that any financial instruments admitted to trading on the regulated market are capable of being traded in a fair, orderly and efficient manner and, in the case of transferable securities, are freely negotiable.

(3) In the case of derivatives those rules must ensure, in particular, that any derivative contract provides for the orderly pricing of the derivative and effective settlement conditions.

(4) A regulated market must establish arrangements for the regular review of compliance with its admission requirements of the financial instruments which it admits to trading.

(5) A regulated market must establish and maintain–

(a) effective arrangements to verify that issuers of transferable securities that are admitted to trading on the regulated market comply with their obligations under European Union law in respect of initial, ongoing and other disclosure obligations; and

- (b) arrangements which facilitate its members or participants in obtaining access to information which has been made public under European Union law.

(6) A transferable security that has been admitted to trading on a regulated market may subsequently be admitted to trading on other regulated markets, even without the consent of the issuer, in compliance with the relevant provisions of Directive 2003/71/EC.

(7) Where a regulated market admits a transferable security to trading in accordance with subsection (6), the issuer—

- (a) must be informed by the regulated market that the security is traded on that market; and
- (b) has no obligation to provide the regulated market with any information under subsection (5) in respect of that security if it has been admitted to trading on that market without the issuer's consent.

(8) This section applies subject to any regulatory technical standards developed by ESMA and adopted by the European Commission under Article 51(6) of MiFID.

**Suspension and removal of financial instruments from trading on a regulated market.**

69.(1) A market operator may suspend or remove from trading a financial instrument which no longer complies with the rules of the regulated market unless suspension or removal would be likely to cause significant damage to the investors' interests or the orderly functioning of the market.

(2) Subsection (1) applies without affecting the FSC's power under section 85(2) to demand suspension or removal of a financial instrument from trading.

(3) A market operator that suspends or removes a financial instrument from trading must also suspend or remove from trading any derivative within Sections C4 to C10 of Schedule 1 that relates or is referenced to the financial instrument, where doing so is necessary to support the objectives of the suspension or removal from trading of that financial instrument.

(4) A market operator that suspends or removes a financial instrument (including any related derivative) from trading must—

- (a) inform the FSC of that decision as soon as possible; and

- (b) make its decision public, by putting the information on the market operator's website.

(5) Where the decision to suspend or remove a financial instrument (including any related derivative) from trading originates in Gibraltar and is due to—

- (a) suspected market abuse;
- (b) a take-over bid; or
- (c) non-disclosure of inside information about the issuer or financial instrument, contrary to Articles 7 and 17 of the Market Abuse Regulation;

the FSC must require any other regulated market, MTF, OTF or systematic internaliser under its jurisdiction which trades the same financial instrument or derivative to suspend or remove that financial instrument or derivative from trading.

(6) Where the FSC is informed that a competent authority in an EEA State has suspended or removed a financial instrument (including any related derivative) from trading under a provision of its domestic law that corresponds to subsection (5), the FSC must require any regulated market, other MTF or OTF or systematic internaliser under its jurisdiction to suspend or remove that financial instrument or derivative from trading.

(7) Subsections (5) and (6) do not apply where the FSC considers that suspension or removal may cause significant damage to the interests of investors or the orderly functioning of the market.

(8) If the FSC requires a financial instrument (including any related derivative) to be suspended or removed from trading under subsection (5) or (6) or, under subsection (7) decides not to do so, it must immediately—

- (a) inform ESMA and the competent authorities in other EEA States of its decision, which must include an explanation of any decision not to suspend or remove an instrument from trading; and
- (b) make its decision public.

(9) The notification requirements in subsections (4) and (8) apply (with any necessary modifications) when the suspension from trading of a financial instrument or related derivatives is ended.

(10) The notification requirements in subsections (4) and (8) also apply if the FSC suspends or removes a financial instrument or related derivative from trading under section 85(2).

(11) This section applies subject to any regulatory technical standards, implementing technical standards or delegated acts adopted by the European Commission under Article 52(2), (3) or (4) of MiFID.

**Access to a regulated market.**

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

(2) Those rules must specify any obligations for 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 investment firms or credit institutions that are operating on the market;
- (d) the conditions established under subsection (3) that apply to members or participants which are not investment firms or credit institutions; and
- (e) the rules and procedures for the clearing and settlement of transactions concluded on the regulated market.

(3) A regulated market may admit as members or participants investment firms, credit institutions authorised under the Capital Requirements Directive and other persons who—

- (a) are of sufficient good repute;
- (b) have a sufficient level of trading ability, competence and experience;
- (c) have, where applicable, adequate organisational arrangements;
- (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 in sections 35, 39, 41 and 42 do not apply to members and participants of a regulated market in respect of transactions concluded between them on that market, but do apply between a member or participant and its client when, acting on behalf of the client, the member or participant executes an order on the regulated market.

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

(6) A regulated market from another EEA State, without further legal or administrative requirements, may provide appropriate arrangements in Gibraltar so as to facilitate access to and trading on that market by remote members or participants established in Gibraltar.

(7) A regulated market established in Gibraltar which intends to provide arrangements of the kind mentioned in subsection (6) in another EEA State must notify the FSC of that intention.

(8) Where the FSC receives a notification under subsection (7) it must–

- (a) within one month of receiving it inform the EEA State concerned of the regulated market's intention to provide those arrangements in that State;
- (b) provide ESMA at its request with access to that information in accordance with the procedure and conditions set out in Article 35 of Regulation (EU) No 1095/2010; and
- (c) without undue delay provide the host State competent authority with the identity of the members or participants of the regulated market established in the host State.

(9) A market operator must provide the FSC, on a regular basis, with a list of the members or participants of the regulated market and that list must include the information which the FSC needs in order to comply with subsection (8)(c).

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

71.(1) A regulated market must–

- (a) establish and maintain effective arrangements and procedures, including the necessary resources, for regularly monitoring the compliance by its members or participants with its rules; and

- (b) monitor orders sent, including cancellations and transactions undertaken by its members or participants under its systems, in order to identify–
  - (i) infringements of those rules;
  - (ii) disorderly trading conditions;
  - (iii) system disruptions in relation to a financial instrument; or
  - (iv) conduct that may indicate behaviour that is prohibited under the Market Abuse Regulation.

(2) The market operator of a regulated market must inform the FSC immediately of–

- (a) significant infringements of its rules;
- (b) disorderly trading conditions;
- (c) system disruptions in relation to a financial instrument; or
- (d) conduct that may indicate behaviour that is prohibited under the Market Abuse Regulation

(3) Subject to subsection (4), the FSC must communicate any information it receives under subsection (2) to ESMA and the competent authorities in other EEA States.

(4) In relation to behaviour of the kind specified in subsection (2)(d), the FSC must be convinced that the behaviour is being or has been carried out before it communicates that information to ESMA and the competent authorities in other EEA States.

(5) A market operator must–

- (a) without undue delay communicate any information under subsection (2)(d) to–
  - (i) the FSC; and
  - (ii) the Royal Gibraltar Police; and
- (b) fully assist those organisations in investigating and prosecuting market abuse occurring on or through the systems of the regulated market.

(6) This section applies subject to any delegated acts adopted by the European Commission under Article 54(4) of MiFID.

**Provisions regarding CCP and clearing and settlement arrangements.**

72.(1) A regulated market may enter into appropriate arrangements with a CCP or clearing house and a settlement system in another EEA State with a view to them providing for the clearing or settlement under their systems of some or all trades concluded by market participants.

(2) The FSC may prohibit an arrangement under subsection (1) only where doing so is demonstrably necessary in order to maintain the orderly functioning of the regulated market in question, taking account of the conditions for settlement systems established under section 55(3).

(3) In order to avoid undue duplication of control, the FSC must take account of any oversight or supervision of the clearing and settlement system already exercised by other authorities with competence in relation to those systems.

(4) This section applies without affecting Titles III to V of Regulation (EU) No 648/2012.

**List of regulated markets.**

73. The FSC must maintain a list of the regulated markets for which Gibraltar is the home State and must send a copy of that list and any amendments to it to ESMA and the other EEA States.”.

**PART 4**

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

**Position limits and position management controls in commodity derivatives.**

74.(1) The FSC must establish and apply position limits on the size of a net position which a person can hold at all times in commodity derivatives traded on trading venues and economically equivalent OTC contracts.

(2) The limits must be set on the basis of all positions held by a person and those held on its behalf at an aggregate group level, in order to–

- (a) prevent market abuse;



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

(3) Any position limits established by the FSC must be based upon the methodology for calculating positions developed by ESMA and adopted under Article 57(3) of MiFID (“the ESMA calculation methodology”).

(4) Position limits do not apply to positions which are–

- (a) held by or on behalf of a non-financial entity; and
- (b) objectively measurable as reducing risks directly relating to the commercial activity of that non-financial entity.

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

(6) The FSC must–

- (a) set position limits for each contract in commodity derivatives traded on trading venues, including economically equivalent OTC contracts;
- (b) review position limits where, based on its determination of deliverable supply and open interest, there is a significant change in deliverable supply or open interest or any other significant change on the market; and
- (c) where appropriate, reset the position limits in accordance with the ESMA calculation methodology.

(7) The FSC must notify ESMA of the exact position limits the FSC intends to set and, where ESMA issues an opinion to the FSC assessing the compatibility of those position limits with the objectives in subsection (2) and the ESMA calculation methodology, the FSC must–

- (a) modify the position limits in accordance with ESMA’s opinion; or
- (b) where it imposes position limits contrary to that opinion, provide ESMA with the FSC’s reasons for considering that

modification is unnecessary and immediately publish those reasons in a notice on its website.

(8) Where the same commodity derivative is traded in significant volumes on trading venues in more than one jurisdiction, the single position limit to be applied on all trading in that derivative must be set by the competent authority of the trading venue where the largest volume of trading takes place (“the central competent authority”).

(9) The central competent authority must consult the competent authorities of other trading venues on which that derivative is traded in significant volumes on–

- (a) the single position limit to be applied to the derivative; or
- (b) any revision to that single position limit.

(10) If the competent authorities cannot reach agreement on a single position limit, they must refer the dispute to ESMA for settlement, in accordance with Article 57(6) of MiFID.

(11) The competent authorities of trading venues where the same commodity derivative is traded and of position holders in that derivative must establish cooperation arrangements, including arrangements for the exchange of relevant data, to enable a single position limit to be monitored and enforced.

(12) An investment firm or market operator operating a trading venue which trades commodity derivatives must apply position management controls which include powers for the trading venue to–

- (a) monitor the open interest positions of persons;
- (b) access information (including all relevant documentation) from persons about the size and purpose of a position or exposure, beneficial or underlying owners, any concert arrangements and any related assets or liabilities in the underlying market;
- (c) require a person to terminate or reduce a position, on a temporary or permanent basis as the case may require and to take appropriate action immediately to secure the termination or reduction if the person does not comply; and
- (d) where appropriate, require a person to provide liquidity back into the market at an agreed price and volume on a temporary basis with the express intent of mitigating the effects of a large or dominant position.

(13) Position limits and position management controls must—

- (a) be transparent and non-discriminatory; and
- (b) specify how they apply to persons, taking account of the nature and composition of market participants and the use they make of the contracts submitted to trading.

(14) An investment firm or market operator operating a trading venue must provide details of its position management controls to the FSC on a regular basis, and the FSC must provide ESMA with that information and details of the position limits which the FSC has established.

(15) The FSC may only in an exceptional case impose position limits which are more restrictive than those established under subsections (1) and (2), where doing so is objectively justified and proportionate, taking account of the liquidity and orderly functioning of a specific market.

(16) Where the FSC imposes more restrictive position limits in accordance with subsection (15) it must—

- (a) publish details of those position limits on its website; and
- (b) notify ESMA of those position limits and include within that notice a justification for their imposition.

(17) Restrictive position limits are valid for a specified period of up to six months from the date of their publication on the FSC's website and expire automatically unless they are renewed for one or more periods of up to six months, which the FSC may do if the grounds for the restriction continue to apply.

(18) Where, under Article 57(13) of MiFID, ESMA issues an opinion on the imposition of more restrictive position limits by the FSC and the FSC imposes limits contrary to that opinion, the FSC must immediately publish the reasons for that decision in a notice on its website.

(19) Any position limit imposed by the FSC under this section must be imposed in accordance with section 85(2)(n).

(20) The FSC, in respect of infringements of position limits set in accordance with this section, may impose sanctions under this Act on—

- (a) a person, whether or not situated or operating in Gibraltar, who holds a position which exceeds the limits on commodity derivative contracts the FSC has set in relation to contracts on

trading venues situated or operating in Gibraltar or economically equivalent OTC contracts; and

- (b) a person situated or operating in Gibraltar who holds a position which exceeds the limits on commodity derivative contracts set by the competent authority in another EEA State.

(21) This section applies subject to any regulatory technical standards adopted by the European Commission under Article 57(3) or (12) of MiFID.

**Position reporting by categories of position holders.**

75.(1) An investment firm or market operator operating a trading venue which trades commodity derivatives or emission allowances or derivatives of them must—

- (a) publish a weekly report with the aggregate positions held by the different categories of persons for the different commodity derivatives or emission allowances or derivatives of them traded on its trading venue, specifying—
  - (i) the number of long and short positions by those categories;
  - (ii) the changes to those positions since the previous report;
  - (iii) the percentage of the total open interest represented by each category; and
  - (iv) the number of persons holding a position in each category in accordance with subsection (6);
- (b) provide the FSC and ESMA with a copy of each report published under paragraph (a); and
- (c) provide the FSC with a complete breakdown, at least on a daily basis, of the positions held by all persons on that trading venue, including its members, participants and their clients.

(2) Subsections (1)(a) and (b) only apply where both the number of persons and their open positions exceed the minimum thresholds specified by the European Commission under Article 58(6) of MiFID.

(3) An investment firm trading in commodity derivatives or emission allowances or derivatives of them outside a trading venue must provide to the relevant competent authority, at least on a daily basis, a complete breakdown of—

- (a) the firm's positions taken in commodity derivatives or emission allowances or derivatives of them traded on a trading venue and economically equivalent OTC contracts; and
- (b) the positions in those derivatives, allowances or contracts of its clients and the clients of those clients, until the end client is reached;

in accordance with Article 26 of MiFIR and, where applicable, Article 8 of Regulation (EU) No 1227/2011.

(4) In subsection (3) the “relevant competent authority” means–

- (a) the competent authority of the trading venue where the commodity derivatives or emission allowances or derivatives of them are traded; or
- (b) the central competent authority, where the commodity derivatives or emission allowances or derivatives of them are traded in significant volumes on trading venues in more than one jurisdiction.

(5) In order to enable monitoring of compliance with section 74(1) and (2), members or participants of regulated markets, MTFs and clients of OTFs must report to the investment firm or market operator operating that trading venue, at least on a daily basis, details of–

- (a) their own positions held through contracts traded on that trading venue; and
- (b) the positions of their clients and the clients of those clients, until the end client is reached.

(6) An investment firm or market operator operating a trading venue must classify persons holding positions in commodity derivatives or emission allowances or derivatives of them according to the nature of the person's main business, taking account of any applicable authorisation, as–

- (a) investment firms or credit institutions;
- (b) investment funds, being either–
  - (i) an undertaking for collective investments in transferable securities (UCITS) within the meaning of the UCITS Directive; or

- (ii) an alternative investment fund manager within the meaning of Directive 2011/61/EC;
  - (c) other financial institutions, including–
    - (i) insurance undertakings and reinsurance undertakings within the meaning of Directive 2009/138/EC; and
    - (ii) institutions for occupational retirement provision within the meaning of Directive 2003/41/EC;
  - (d) commercial undertakings; or
  - (e) in the case of emission allowances or derivatives of them, operators with compliance obligations under Directive 2003/87/EC.
- (7) Reports under subsection (1) must specify–
- (a) the number of long and short positions by category of persons;
  - (b) any changes to those positions since the previous report;
  - (c) the percentage of total open interest represented by each category; and
  - (d) the number of persons in each category.
- (8) Those reports and the breakdowns referred to in subsection (3) must differentiate between–
- (a) positions identified as positions which in an objectively measurable way reduce risks directly relating to commercial activities; and
  - (b) other positions.
- (9) This section applies subject to any regulatory technical standards, implementing technical standards or delegated acts adopted by the European Commission under Article 58(5), (6) or (7) of MiFID.

## **PART 5 DATA REPORTING SERVICES**

### *Authorisation procedures for data reporting services providers*

#### **Requirement for authorisation.**

76.(1) The provision of any data reporting service in Section D of Schedule 1 as a regular occupation or business is subject to prior authorisation by the FSC in accordance with this Part.

(2) Despite subsection (1), an investment firm or market operator operating a trading venue may operate a data reporting service as part of its existing authorisation if–

- (a) the investment firm or market operator has applied to the FSC, in the form and manner it may direct, for verification of the investment firm's or market operator's compliance with this Part; and
- (b) the FSC has given the investment firm or market operator written confirmation of its compliance with this Part.

(3) If the FSC–

- (a) proposes to refuse to confirm an investment firm's or market operator's compliance with this Part, the FSC must give the investment firm or market operator a warning notice; and
- (b) decides to refuse to confirm an investment firm's or market operator's compliance with this Part, the FSC must give the investment firm or market operator a decision notice.

(4) The FSC must establish and maintain a register of all data reporting services providers that contains information on the services for which each provider is authorised and which is–

- (a) publicly accessible;
- (b) updated on a regular basis.

(5) The FSC must ensure that ESMA is notified of every authorisation issued under this Part.

(6) Data reporting services providers must provide their services under the supervision of the FSC, which must keep under regular review the compliance of data reporting services providers with the requirements of this Part including, in particular, their compliance at all times with the conditions for their authorisation under this Part.

(7) A person who provides any data reporting services in contravention of subsection (1) commits an offence and is liable–

- (a) on conviction on indictment, to imprisonment for a term not exceeding seven years, to a fine or both;
- (b) on summary conviction, to a fine not exceeding £25,000.

(8) Subsection (7) does not apply to a person who is exempt from the need for authorisation under subsection (1).

**Scope of authorisation.**

77.(1) The FSC must ensure that an authorisation specifies the data reporting service which the data reporting services provider is authorised to provide.

(2) A data reporting services provider seeking to extend its business to additional data reporting services must submit a request to the FSC for the extension of its authorisation.

(3) An authorisation is valid for the entire EEA and allows a data reporting services provider to provide throughout the EEA the services for which it has been authorised.

**Procedures for granting and refusing requests for authorisation.**

78.(1) The FSC must not grant an authorisation unless it is satisfied that the applicant complies with all the requirements which apply under this Part.

(2) An application for authorisation must be made in the form required by the FSC.

(3) A data reporting services provider must provide all the information necessary (including a programme of operations setting out, among other things, the types of services envisaged and the organisational structure) to enable the FSC to satisfy itself that the data reporting services provider has established, at the time of initial authorisation, all the necessary arrangements to meet its obligations under this Part.

(4) An authorisation may be granted subject to one or more conditions under section 85(3).

(5) If the FSC proposes to grant an authorisation application it must give written notice to the applicant.

(6) If the FSC—



- (a) proposes to refuse an authorisation application or grant it subject to conditions, the FSC must give the applicant a warning notice; and
- (b) decides to refuse an authorisation application or grant it subject to conditions, the FSC must give the applicant a decision notice.

(7) An applicant must be informed, within six months of the submission of a complete application, whether or not an authorisation has been granted.

(8) This section applies subject to any regulatory technical standards or implementing technical standards adopted by the European Commission under Article 61(4) or (5) of MiFID.

#### **Withdrawal of authorisations.**

79.(1) The FSC may withdraw the authorisation of a data reporting services provider where the provider—

- (a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has provided no data reporting services for the preceding six months;
- (b) has obtained the authorisation by making false statements or by any other irregular means;
- (c) no longer meets the conditions under which authorisation was granted; or
- (d) has seriously and systematically infringed the provisions of this Act or MiFIR.

(2) If the FSC—

- (a) proposes to withdraw an authorisation, it must give the data reporting services provider a warning notice; and
- (b) decides to withdraw an authorisation, it must give the data reporting services provider a decision notice.

#### **Requirements for the management body of a data reporting services provider.**

80.(1) The members of the management body of a data reporting services provider must at all times be—

- (a) of sufficiently good repute; and
- (b) possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties.

(2) A provider's management body must possess adequate collective knowledge, skills and experience to be able to understand the activities of the data reporting services provider and each member of that body must act with honesty, integrity and independence of mind and, where necessary, challenge effectively the decisions of the senior management and effectively oversee and monitor management decision-making.

(3) Where a market operator seeks authorisation to operate an APA, CTP or ARM and the members of the management body of the APA, CTP or ARM are the same as the members of the management body of the regulated market, those persons are to be regarded as meeting the requirements in subsection (1).

(4) A data reporting services provider must—

- (a) notify the FSC of all members of the provider's management body and of any changes to its membership; and
- (b) provide the FSC with all the information it requires in order to assess whether the provider complies with subsections (1) and (2).

(5) In assessing the suitability of members of a management body for the purposes of subsections (1) and (2), the FSC must have regard to any guidelines issued by ESMA under Article 63(2) of MiFID.

(6) The management body of a data reporting services provider must define and oversee the implementation of governance arrangements that ensure effective and prudent management of the provider, including the segregation of duties and the prevention of conflicts of interest, in a manner that promotes the integrity of the market and the interests of its clients.

(7) The FSC must refuse to authorise a data reporting services provider where the FSC—

- (a) is not satisfied that the persons who will effectively direct the provider's business are of sufficiently good repute; or
- (b) has objective and demonstrable grounds for believing that proposed changes to the management of the provider pose a threat to its sound and prudent management and to the adequate

consideration of the interests of its clients and the integrity of the market.

(8) If the FSC—

- (a) proposes to refuse to approve a person as suitable to be a member of a data reporting services provider's management body, the FSC must give a warning notice to the person and to the services provider; and
- (b) decides to refuse to approve a person as suitable to be a member of a data reporting services provider's management body, the FSC must give a decision notice to the person and to the services provider.

*Conditions for APAs*

**APA organisational requirements.**

81.(1) An approved publication arrangement (APA) must have adequate policies and arrangements in place to make public the information required under Articles 20 and 21 of MiFIR as close to real time as is technically possible on a reasonable commercial basis.

(2) The information in subsection (1) must be made available free of charge by an APA 15 minutes after it has published it and an APA must be able to efficiently and consistently disseminate the information in a way that ensures fast access to the information, on a non-discriminatory basis and in a format that facilitates the consolidation of the information with similar data from other sources.

(3) The information made public by an APA in accordance with subsections (1) and (2) must include—

- (a) the identifier of the financial instrument;
- (b) the price at which the transaction was concluded;
- (c) the volume of the transaction;
- (d) the time of the transaction;
- (e) the time the transaction was reported;
- (f) the price notation of the transaction;

- (g) the code for the trading venue on which the transaction was executed or, where the transaction was executed via a systematic internaliser, the code “SI” or “OTC”; and
- (h) where applicable, an indicator that the transaction was subject to specific conditions.

(4) An APA must maintain and operate effective administrative arrangements designed to prevent conflicts of interest with its clients and, in particular, an APA which is also a market operator or investment firm must–

- (a) treat all information collected in a non-discriminatory manner; and
- (b) maintain and operate appropriate arrangements to separate its different business functions.

(5) An APA must–

- (a) have sound security mechanisms in place designed to guarantee the security of the means of transfer of information, minimise the risk of data corruption and unauthorised access and to prevent information leakage before publication; and
- (b) maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.

(6) An APA must have effective systems in place to check trade reports for completeness, identify omissions and obvious errors and request re-transmission of any erroneous reports.

(7) This section applies subject to any regulatory technical standards or delegated acts adopted by the European Commission under Article 64(6), (7) or (8) of MiFID.

#### *Conditions for CTPs*

#### **CTP organisational requirements.**

82.(1) A consolidated tape provider (CTP) must have adequate policies and arrangements in place to collect the information made public in accordance with Articles 6 and 20 of MiFIR, consolidate it into a continuous electronic data stream and make the information available to the public as close to real time as is technically possible and on a reasonable commercial basis.

(2) That information must at least include–

- (a) the identifier of the financial instrument;
- (b) the price at which the transaction was concluded;
- (c) the volume of the transaction;
- (d) the time of the transaction;
- (e) the time the transaction was reported;
- (f) the price notation of the transaction;
- (g) the code for the trading venue on which the transaction was executed or, where the transaction was executed via a systematic internaliser, the code “SI” or “OTC”;
- (h) where applicable, the fact that a computer algorithm within the investment firm was responsible for the investment decision and execution of the transaction;
- (i) where applicable, an indicator that the transaction was subject to specific conditions; and
- (j) if the obligation to make public the information referred to in Article 3(1) of MiFIR was waived in accordance with Article 4(1)(a) or (b) of that Regulation, a flag to indicate which of those waivers applies to the transaction.

(3) The information in subsections (1) and (2) must be made available free of charge by a CTP 15 minutes after it has published it and a CTP must be able to efficiently and consistently disseminate the information in a way that ensures fast access to the information, on a non-discriminatory basis and in formats that are easily accessible and utilisable for market participants.

(4) A CTP must have adequate policies and arrangements in place to collect the information made public in accordance with Articles 10 and 21 of MiFIR, consolidate it into a continuous electronic data stream and make the following information available to the public as close to real time as is technically possible on a reasonable commercial basis including–

- (a) the identifier or identifying features of the financial instrument;
- (b) the price at which the transaction was concluded;
- (c) the volume of the transaction;
- (d) the time of the transaction;

- (e) the time the transaction was reported;
- (f) the price notation of the transaction;
- (g) the code for the trading venue on which the transaction was executed or, where the transaction was executed via a systematic internaliser, the code “SI” or “OTC”; and
- (h) where applicable, an indicator that the transaction was subject to specific conditions.

(5) The information in subsection (4) must be made available free of charge by a CTP 15 minutes after it has published it and a CTP must be able to efficiently and consistently disseminate the information in a way that ensures fast access to the information, on a non-discriminatory basis and in generally accepted formats that are interoperable and easily accessible and utilisable for market participants.

(6) A CTP must ensure that the data provided under subsection (4) is consolidated from all the regulated markets, MTFs, OTFs and APAs and for any financial instrument specified by the European Commission in accordance with Article 65(8)(c) of MiFID.

(7) A CTP must maintain and operate effective administrative arrangements designed to prevent conflicts of interest and, in particular, a market operator or APA which also operates a consolidated tape must—

- (a) treat all information collected in a non-discriminatory fashion; and
- (b) maintain and operate appropriate arrangements to separate its different business functions.

(8) A CTP must—

- (a) have sound security mechanisms in place designed to guarantee the security of the means of transfer of information and minimise the risk of data corruption and unauthorised access; and
- (b) maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.

(9) This section applies subject to any regulatory technical standards or delegated acts adopted by the European Commission under Article 65(6), (7) or (8) of MiFID.

*Conditions for ARMs***ARM organisational requirements.**

83.(1) An approved reporting mechanism (ARM) must have adequate policies and arrangements in place to report the information required under Article 26 of MiFIR (in accordance with that Article)–

- (a) as soon as possible; and
- (b) in any event, by no later than the close of the working day following the day upon which the transaction took place.

(2) An ARM must maintain and operate effective administrative arrangements designed to prevent conflicts of interest with its clients and, in particular, an ARM that is also a market operator or investment firm must–

- (a) treat all information collected in a non-discriminatory manner; and
- (b) maintain and operate appropriate arrangements to separate its different business functions.

(3) An ARM must–

- (a) have sound security mechanisms in place designed to guarantee the security and authentication of the means of transfer of information, minimise the risk of data corruption and unauthorised access, prevent information leakage and maintain the confidentiality of the data at all times; and
- (b) maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.

(4) An ARM must have effective systems in place–

- (a) to check transaction reports for completeness, identify omissions and obvious errors caused by an investment firm and, where an error or omission is identified, to communicate the details to the investment firm and request the transmission of a corrected report; and
- (b) to enable the ARM to detect errors or omissions caused by the ARM and correct and to transmit or re-transmit (as the case may be) complete and correct transaction reports to the FSC.

(5) This section applies subject to any delegated acts adopted by the European Commission under Article 66(5) of MiFID.

**PART 6**  
**COMPETENT AUTHORITY**

*Designation, powers and redress procedures*

**Designation of competent authority.**

84.(1) The FSC is designated as the competent authority which is to perform the functions provided for under this Act, MiFIR and MiFID.

(2) The FSC is also designated in accordance with Article 79(1) as the single contact point in Gibraltar for the purposes of MiFID and MiFIR.

(3) The Minister must ensure that the European Commission, ESMA and the competent authorities of other EEA States are informed of the FSC's designation under subsections (1) and (2).

**Supervisory powers.**

85.(1) For the purpose of performing its functions under this Act, MiFIR and MiFID, the FSC may–

- (a) exercise any power the FSC has under this Act, MiFIR, the Financial Services (Banking) Act or the Financial Services (Capital Requirements Directive IV) Regulations 2013;
- (b) act directly or in collaboration with other competent or statutory authorities; or
- (c) institute legal proceedings.

(2) In performing those functions, the FSC may–

- (a) require the provision of documents and data in any form and retain copies;
- (b) require information from any person and, if necessary, summon and question a person with a view to obtaining information;
- (c) carry out on-site inspections and investigations (other than at premises used wholly or mainly as a dwelling);
- (d) require–



- (i) existing recordings of telephone conversations, electronic communications or data traffic records held by an investment firm, credit institution or any other entity regulated under this Act or MiFIR;
- (ii) where permitted by the laws of Gibraltar, existing data traffic records held by a telecommunications operator, where there is a reasonable suspicion of an infringement and where those records may be relevant to the investigation of that infringement;
- (e) request the freezing or sequestration of assets;
- (f) impose a temporary prohibition of professional activity;
- (g) require the provision of information by the auditors of an investment firm, regulated market or data reporting services provider;
- (h) refer a matter for criminal prosecution;
- (i) authorise auditors or experts to carry out verifications or investigations;
- (j) require the provision by any person of information and documents regarding the size and purpose of a position or exposure entered into via a commodity derivative, and any assets or liabilities in the underlying market;
- (k) require any person to—
  - (i) cease (on a temporary or permanent basis) any practice or conduct that the FSC considers to be contrary to this Act or MiFIR; and
  - (ii) desist from repeating that practice or conduct;
- (l) require a financial instrument to be—
  - (i) suspended from trading; or
  - (ii) removed from trading, whether on a regulated market or under other trading arrangements;

(and the procedures in section 48(11) to (21) apply to the exercise of this power);

- (m) request any person to take steps to reduce the size of a position or exposure;
  - (n) limit the ability of any person from entering into a commodity derivative, including by introducing limits on the size of a position any person can hold at all times in accordance with section 74;
  - (o) issue public notices;
  - (p) suspend the marketing or sale of financial instruments or structured deposits where—
    - (i) the conditions of Articles 40, 41 or 42 of MiFIR are met; or
    - (ii) the investment firm has not developed or applied an effective product approval process or otherwise failed to comply with section 17(3) to (9);
  - (q) require the removal of an individual from the management board of an investment firm or market operator; or
  - (r) adopt any type of measure to ensure that investment firms, regulated markets and other persons to whom this Act or MiFIR apply, continue to comply with legal requirements;
- (3) The measures which the FSC may adopt under subsection (2)(r) include, in particular—
- (a) the imposition of one or more conditions that the FSC considers appropriate on an authorisation granted under this Act, either at the time it is granted or at any other time; and
  - (b) the variation or revocation of any condition so imposed.
- (4) Where, after an authorisation has been granted, the FSC—
- (a) proposes to impose a condition on, or vary a condition of, the authorisation, it must give the holder a warning notice; and
  - (b) decides to impose a condition on, or vary a condition of, the authorisation, it must give the holder a decision notice.
- (5) This section applies without limiting the FSC's powers under any law which confers supervisory functions upon the FSC.

(6) The Minister may by regulations make further provision in respect of the FSC's powers under this section.

**Sanctions for specified infringements.**

86.(1) The FSC may take any of the actions specified in sections 87 to 92 if it is satisfied that a specified infringement is being or has been committed.

(2) Where an obligation under this Act applies to an investment firm, market operator, data reporting services provider, credit institution or branch of third-country firm, in addition to any action taken against that entity, action may be taken under sections 87 to 92 against—

- (a) the members of the management body of the investment firm and market operator; and
- (b) any other person who responsible for an infringement.

(3) In this Act a “specified infringement” means—

- (a) infringement of a provision of—
  - (i) this Act specified in subsection (4); or
  - (ii) MiFIR specified in subsection (5);
- (b) providing investment services or performing investment activities without the required authorisation or approval in accordance with—
  - (i) section 6, 7(3), 50 to 53, 57, 61 or 76; or
  - (ii) Article 7(1) (third sentence) or Article 11(1) of MiFIR; or
- (c) failing to cooperate with an investigation or comply with an inspection or request under section 85(2).

(4) The specified provisions of this Act are—

- (a) in Part 2—
  - (i) section 13(1)(b);
  - (ii) section 11;
  - (iii) section 14 (1) to (5) and (9);

- (iv) sections 17 and 20(1) to (12);
  - (v) section 28;
  - (vi) sections 29(1) to (8);
  - (vii) sections 30 and 31;
  - (viii) section 32(1);
  - (ix) section 34(1) to (4);
  - (x) section 35(1) to (8) and (10) to (18);
  - (xi) section 39(1) to (14);
  - (xii) section 40;
  - (xiii) section 41(1) to (14);
  - (xiv) section 42(1) to (4);
  - (xv) section 43(2), (3) and (5);
  - (xvi) section 46(2) or (5);
  - (xvii) section 47(1) and (4);
  - (xviii) section 48(1) to (7);
  - (xix) section 49(2);
  - (xx) sections 50(2), (4) and (9) and 52(2), (4) and (8);
  - (xxi) sections 51(2) and (9) and 53(2) and (8);
  - (xxii) section 54(1) to (3); and
  - (xxiii) section 55(1) to (3);
- (b) in Part 3–
- (i) section 61(3), (4), (8)(a) and (10)(b);
  - (ii) section 62 (1) to (16), (18) and (19);

- (iii) section 63(1) and (2);
  - (iv) section 64;
  - (v) section 65;
  - (vi) section 66(1);
  - (vii) section 67(1);
  - (viii) section 68(1) to (4) and (7);
  - (ix) section 69(1) to (7);
  - (x) section 70(1) to (3), (7) and (9); and
  - (xi) section 71(1), (2) and (5);
- (c) in Part 4–
- (i) section 74(1) to (5), (12) and (14); and
  - (ii) section 75(1) to (8);
- (d) in Part 5–
- (i) section 80(1) to (3), (4) and (5);
  - (ii) section 81(1) to (6);
  - (iii) section 82(1) to (8); and
  - (iv) section 83(1) to (4).

(5) The specified provisions of MiFIR are–

- (a) Articles 3(1) and (3);
- (b) Article 4(3) (first sub-paragraph);
- (c) Article 6;
- (d) Article 7(1) (first sentence of third sub-paragraph);
- (e) Article 8(1), (3) and, (4);
- (f) Article 10;

- (g) Article 11(1) (first sentence of third sub-paragraph) and (3) (third sub-paragraph);
- (h) Article 12(1);
- (i) Article 13(1);
- (j) Article 14(1), (2) (first sentence) and (3) (second, third and fourth sentences);
- (k) Article 15(1) (first sub-paragraph and first and third sentences of second sub-paragraph), (2) and (4) (second sentence);
- (l) Article 17(1) (second sentence);
- (m) Article 18(1), (2), (4) (first sentence), (5) (first sentence), (6) (first sub-paragraph), (8) and (9);
- (n) Article 20(1) and (2) (first sentence);
- (o) Article 21(1), (2) and (3);
- (p) Article 22(2);
- (q) Article 23(1) and (2);
- (r) Article 25(1) and (2);
- (s) Article 26(1) (first subparagraph), (2) to (5), (6) (first subparagraph) and (7) (first to fifth and eighth sub-paragraphs);
- (t) Article 27(1);
- (u) Article 28(1) and (2) (first sub-paragraph);
- (v) Article 29(1) and (2);
- (w) Article 30(1);
- (x) Article 31(2) and (3);
- (y) Article 35(1), (2) and (3);
- (z) Article 36(1), (2) and (3);
- (aa) Article 37(1) and (3); and

(bb) Articles 40 to 42.

**Publication of infringement.**

87.(1) The FSC may publish a statement specifying—

- (a) the nature of the infringement, and
- (b) the identity of the person who has committed it.

(2) Publication under this section may take any form or combination of forms that the FSC thinks appropriate.

**Cease and desist order.**

88.(1) The FSC may order a person—

- (a) to cease any conduct which constitutes an infringement, and
- (b) to desist from any repetition of that conduct.

(2) This section applies without limiting the FSC's powers under section 85(2)(k).

**Suspension or withdrawal of authorisation.**

89.(1) The FSC may by order suspend or withdraw an authorisation it has granted to an investment firm, market operator authorised to operate an MTF or OTF, regulated market, APA, CTP or ARM.

(2) A suspension under subsection (1) must specify a period during which it has effect.

(3) The withdrawal of an authorisation under subsection (1) must be undertaken in a manner which accords with section 13, 60 or 79.

(4) This section applies without limiting any other power of the FSC to withdraw an authorisation under this Act.

**Prohibition order.**

90.(1) The FSC may by order (“a prohibition order”) prohibit a specified individual from exercising management functions in investment firms.

(2) A prohibition order—

- (a) must specify a period during which it has effect; and
- (b) may specify an indefinite period in respect of repeated infringements.

**Suspension from market participation.**

91.(1) The FSC may by order (“a participation suspension order”) suspend an investment firm from being a member of or participant in a regulated market, MTF or client of an OTF.

(2) A participation suspension order must specify a period during which it has effect.

**Civil penalties.**

92.(1) The FSC may by order impose a penalty for a specified infringement of an amount not exceeding whichever is the higher of the following—

- (a) where the benefit derived from the infringement can be determined, twice the amount of that benefit;
- (b) in the case of a legal person, EUR 5,000,000 or 10% of the total annual turnover according to the last available annual accounts approved by its management body;
- (c) in the case of an individual, EUR 5,000,000.

(2) A penalty under subsection (1)(b) or (c) may be imposed as an equivalent amount expressed in Sterling, based upon the exchange rate as at 2 July 2014.

(3) Where a legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts in accordance with Directive 2013/34/EU, the relevant total turnover for the purpose of subsection (1)(b) is the total annual turnover, or the corresponding type of income in accordance with the relevant accounting legislative acts, according to the last available consolidated annual accounts approved by the management body of the ultimate parent undertaking.

(4) A penalty imposed under this section may be enforced as if it was a civil debt owed to the FSC.

**Other infringements.**

93.(1) Where the FSC is satisfied that an infringement of this Act (other than a specified infringement) is being or has been committed, the FSC may



take any of the actions specified in subsection (2) in respect of that infringement.

(2) The actions are—

- (a) to publish a statement under section 87;
- (b) to issue a cease and desist order under section 88; or
- (c) to impose a civil penalty of an amount not exceeding £10,000

(3) Section 92(4) applies to the recovery of a penalty imposed under subsection (2)(c).

(4) This section applies without limiting any other power which the FSC may exercise in respect an infringement of this Act.

**Exercise of powers to impose sanctions.**

94. The FSC must ensure that, in determining the type and level of sanction imposed for an infringement, all relevant circumstances are taken into account, including where appropriate—

- (a) the gravity and the duration of the infringement;
- (b) the degree of responsibility of the person responsible;
- (c) the financial strength of the person responsible, for example, as indicated by a legal person's total turnover or an individual's net assets or annual income;
- (d) in so far as they can be determined—
  - (i) the importance of the profits gained or losses avoided by the person responsible; and
  - (ii) the losses for third parties caused by the infringement;
- (e) the level of cooperation with the FSC of the person responsible (but without affecting the need to ensure disgorgement of profits gained or losses avoided by that person); and
- (f) previous infringements by the person responsible.

**Warning notices.**

95.(1) The FSC must give the person concerned a warning notice before—

- (a) taking any action under sections 87 to 92 in respect of a specified infringement;
- (b) taking any action under section 87, 88 or 93 in respect of any other infringement;
- (c) refusing under section 6 to confirm a market operator's compliance with Part 2;
- (d) refusing to authorise, or extend the authorisation of, an investment firm under section 8 or withdrawing authorisation from an investment firm under section 13;
- (e) refusing to register a tied agent under section 44 or revoking the registration of a tied agent under section 45;
- (f) requiring a financial instrument or related derivative to be suspended or removed from trading under section 48 or 85(2)(l) or refusing to revoke or vary such a requirement;
- (g) withdrawing registration as an SME growth market under section 49;
- (h) refusing to authorise a third-country firm under section 57 or withdrawing authorisation from a third-country firm under section 60;
- (i) refusing to authorise a regulated market or withdrawing authorisation from a regulated market under section 61;
- (j) refusing to approve a person to exercise significant influence over the management of a regulated market under section 63;
- (k) refusing under section 76 to confirm an investment firm's or market operator's compliance with Part 5;
- (l) refusing to authorise a data reporting services provider under section 78 or withdrawing authorisation from a data reporting services provider under section 79;
- (m) refusing to approve a person as a member of a data reporting services provider's management body under section 80; or
- (n) imposing any sanction or restriction under section 112.

(2) A warning notice must–

- (a) be in writing;
- (b) state the action which the FSC proposes to take;
- (c) give reasons for the proposed action; and
- (d) specify a reasonable period (which may not be less than 14 days) within which the person concerned may make representations.

(3) Subsection (1) does not apply if the FSC is satisfied that a warning notice—

- (a) cannot be given because of urgency;
- (b) should not be given because of the risk that steps would be taken to undermine the effectiveness of the action to be taken; or
- (c) is superfluous having regard to the need to give notice of legal proceedings or for some other reason.

**Decision notices.**

96.(1) This section applies where the FSC has—

- (a) issued a warning notice under section 95(1); or
- (b) dispensed with the requirement to do so under section 95(3).

(2) After considering any representations made in accordance with section 95(2), the FSC must issue a decision notice.

(3) A decision notice must—

- (a) be in writing;
- (b) state that the FSC—
  - (i) will take the action specified in the warning notice;
  - (ii) does not propose to take that action; or
  - (iii) will take certain action specified in the warning notice but does not propose to take the remaining action specified in that notice;

- (c) give the FSC's reasons for its decision; and
- (d) give an indication of any right to appeal against the decision and the procedure for doing so.

**Publication of decisions.**

97.(1) This section applies where the FSC has taken action under sections 86 to 93 in respect of an infringement (other than measures of an investigatory nature).

(2) The FSC must publish on its official website details of any action taken in respect of a person under those sections without undue delay after that person is informed of that action.

(3) The information published under subsection (2) must include at least—

- (a) the type and nature of the infringement; and
- (b) the identity of the individual or legal person responsible for it.

(4) The FSC must take one of the steps in subsection (5) where—

- (a) following an obligatory prior assessment, it considers that it would be disproportionate to publish in accordance with subsection (2)—
  - (i) the identity of the legal person involved; or
  - (ii) the personal data of the individual involved; or
- (b) it considers that publication in accordance with that subsection would jeopardise the stability of financial markets or an ongoing investigation.

(5) Those steps are—

- (a) to defer publication until the reasons for non-publication cease to exist;
- (b) to publish the decision on an anonymous basis if doing so ensures effective protection of the personal data concerned; or
- (c) not to publish the decision if the steps in paragraphs (a) and (b) are considered to be insufficient to ensure—

- (i) that the stability of the financial markets would not be put in jeopardy; or
- (ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.

(6) In the case of a decision to publish on an anonymous basis, the publication of the relevant data may be postponed for a reasonable period of time if it is envisaged that within that period the reasons for anonymous publication will cease to exist.

(7) Where a decision to which this section applies is subject to an appeal, the FSC must publish information to that effect on its website and, without undue delay, revise that information to reflect the status and outcome of any appeal or any decision annulling a previous decision to impose a sanction.

(8) The FSC must ensure that any publication in accordance with this section is of proportionate duration and remains on its website for a minimum of five years, but that personal data is only retained on the website for so long as is necessary, in accordance with the Data Protection Act 2004.

(9) The FSC must—

- (a) inform ESMA of all administrative sanctions imposed but not published in accordance with subsection (5)(c), including any related appeal and its outcome;
- (b) if it has disclosed an administrative measure, sanction or criminal sanction to the public, report that fact at the same time to ESMA; and
- (c) provide ESMA annually with aggregated information regarding all sanctions and measures imposed in accordance with subsections (1) to (7) (other than measures of an investigatory nature).

(10) This section applies subject to any implementing technical standards adopted by the European Commission under Article 71(7) of MiFID.

### **Reporting of infringements.**

98.(1) The FSC must establish appropriate arrangements for infringements and potential infringements of this Act or MiFIR to be reported to the FSC.

(2) The arrangements established under subsection (1) must include—

- (a) secure communication channels for the reporting of infringements;
  - (b) specific procedures for the receipt and investigation of reported infringements;
  - (c) arrangements which accord with the Data Protection Act 2004 for the protection of the personal data of an individual who reports an infringement and any individual who is allegedly responsible for an infringement; and
  - (d) access for employees of financial institutions who report infringements committed within their employing institution to—
    - (i) comprehensive information and advice on the legal procedures and remedies available to protect the person against retaliation, discrimination or other types of unfair treatment, including on the procedures for claiming compensation; and
    - (ii) effective assistance from the FSC before any relevant authority involved in the person's protection against unfair treatment, including certification by the FSC in any employment dispute of the reporting person's status as a person who has reported an infringement.
- (3) An employee of a financial institution who reports an infringement in accordance with arrangements established under subsection (1)–
- (a) is not to be considered to be in breach of any restriction on disclosure of information imposed by contract or by any law and any provision in an agreement is void in so far as it purports to preclude an employee from reporting an infringement; and
  - (b) has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his or her employer done on the ground that the employee has reported an infringement.
- (4) An employee who has been subjected to a detriment contrary to subsection (3)(b) may present a complaint to the Employment Tribunal as if the reporting of an infringement was a protected disclosure within the meaning of Part IVA of the Employment Act.

(5) Investment firms, market operators, data reporting services providers, credit institutions (in relation to investment services or investment activities and ancillary services) and branches of third-country firms must—

- (a) establish appropriate internal procedures for their employees to report potential or actual infringements through a specific, independent and autonomous channel; and
- (b) report potential or actual infringements which come to their attention (whether by means of the channel established under paragraph (a) or otherwise) to the FSC.

**Appeals.**

99 (1) A person may appeal to the Supreme Court against—

- (a) a decision taken by the FSC under this Act or MiFIR; or
- (b) failure by the FSC to reach a decision in respect of a complete application for authorisation within six months of its submission.

(2) An appeal must be brought within 28 days of—

- (a) in the case of an appeal under subsection (1)(a), the date of the notice of the decision; or
- (b) in the case of an appeal under subsection (1)(b), the date on which the FSC should have reached a decision.

(3) The Minister may by regulations designate one or more bodies within the following categories that may, in the interests of consumers, take action before the courts to ensure that the provisions of this Act and MiFIR are applied—

- (a) public bodies or their representatives;
- (b) consumer organisations having a legitimate interest in protecting consumers; and
- (c) professional organisations having a legitimate interest in acting to protect their members.

(4) Regulations under subsection (3) may make such incidental and consequential provisions as the Minister considers appropriate.

**Consumer complaints.**

100.(1) The Financial Services Ombudsman Act 2016 applies to consumer disputes relating to the provision of investment and ancillary services by investment firms under this Act.

(2) The Financial Services Ombudsman must cooperate with counterparts in other EEA States in the resolution of cross-border disputes.

(3) The FSC must notify ESMA of the complaint and redress procedures available under the Financial Services Ombudsman Act 2016.

**Civil proceedings for loss.**

101.(1) A breach of this Act or MiFIR is actionable at the suit of a person who suffers loss as a result of that breach, subject to the defences and other incidents applying to actions for breach of statutory duty.

(2) In any proceedings under this section, a certificate issued by or on behalf of the FSC certifying that it has imposed a sanction on a person under this Act for an infringement of this Act or MiFIR is admissible as conclusive evidence of the matters certified.

**Professional secrecy.**

102.(1) The FSC, any person who works or has worked for the FSC and any auditor and expert instructed by the FSC is bound by the obligation of professional secrecy.

(2) A person who is subject to the obligation in subsection (1) must not divulge any confidential information which the person may receive in the course of any duties under this Act other than—

- (a) in summary or aggregate form from which individual investment firms, market operators, regulated markets or other persons cannot be identified; or
- (b) as required by any criminal or taxation law or any other provision of this Act or MiFIR.

(3) Where an investment firm, market operator or regulated market is insolvent or in administration, receivership or liquidation, confidential information which does not concern third parties may be disclosed in civil or commercial proceedings if it is necessary for the purpose of those proceedings.



(4) Without affecting any criminal or taxation law, the FSC or any other person receiving confidential information under this Act or MiFIR may only use that information–

- (a) in the performance of their functions or duties–
  - (i) in the case of the FSC, within the scope of this Act or MiFIR; or
  - (ii) in any other case, for the purpose for which the information was provided;
- (b) for the purpose of administrative or judicial proceedings specifically related to the exercise of those functions or duties; or
- (c) for any other purpose with the consent of the competent authority or person from which the information was received.

(5) This section does not prevent the FSC from exchanging or transmitting confidential information in accordance with this Act or MiFIR or with other statutory provisions applicable to investment firms, credit institutions, pension funds, UCITS, AIFs, insurance and reinsurance intermediaries, insurance undertakings regulated markets or market operators, CCPs, Central Securities Depositories or with the consent of the competent authority or person that communicated the information.

(6) This section does not prevent the FSC from exchanging or transmitting confidential information that has not been received from a competent authority of another EEA State.

#### **Relations with auditors.**

103.(1) An authorised person within the meaning of the Accounting Directive, performing in an investment firm, regulated market or data reporting services provider the task described in Article 34 of the Accounting Directive or Article 73 of the UCITS Directive or any other task prescribed by law, has a duty to report promptly to the FSC any fact or decision concerning that undertaking of which the person has become aware while carrying out that task and which may–

- (a) constitute a material infringement of this Act or any other legal or administrative provisions governing the authorisation or activities of investment firms;
- (b) affect the continuous functioning of the investment firm; or

- (c) lead to refusal to certify the accounts or to the expression of reservations.

(2) An authorised person must also report any fact or decision of which the person becomes aware in carrying out any of the tasks mentioned in subsection (1) in an undertaking which has close links with the investment firm within which the person is carrying out that task.

(3) A person who, in good faith, makes a disclosure to the FSC under subsection (1) or (2) does not breach any contractual or legal restriction on the disclosure of information or incur a liability of any kind.

#### **Data protection.**

104. The processing of personal data for the purposes of this Act must be carried out in accordance with the Data Protection Act 2004 and, where applicable, Regulation (EC) No 45/2001.

#### *Cooperation between the competent authorities of the EEA States and with ESMA*

#### **Obligation to cooperate.**

105.(1) The FSC must cooperate with the competent authorities in other EEA States for the purpose of carrying out their respective duties or making use of their respective powers under this Act, MiFID and MiFIR.

(2) The FSC—

- (a) must render assistance to other competent authorities and, in particular, exchange information and cooperate in any investigation or supervisory activities;
- (b) must take the necessary administrative and organisational measures to facilitate the provision of that assistance; and
- (c) may cooperate with other competent authorities to facilitate the recovery of fines.

(3) The FSC must establish proportionate cooperation arrangements with—

- (a) the home State competent authority of a trading venue which has established arrangements in Gibraltar and the operations of which, when taking account of the securities markets in Gibraltar, have become of substantial importance for the functioning of the securities markets and the protection of the investors in Gibraltar; or

- (b) the host State competent authority of a trading venue whose home State is Gibraltar which has established arrangements in another EEA State and the operations of which, when taking account of the securities markets in the host State, have become of substantial importance for the functioning of the securities markets and the protection of the investors in that State.

(4) The FSC may use its powers for the purpose of cooperation, even where the conduct under investigation does not constitute an infringement of the law of Gibraltar.

(5) Where the FSC has good reasons to suspect that acts contrary to the provisions of MiFID or MiFIR are being or have been carried out by entities not subject to its supervision on the territory of another EEA State, the FSC must notify the competent authority of that EEA State and ESMA in as specific a manner as possible.

(6) Where the FSC as home State competent authority receives a notification of a similar kind to one under subsection (5), it must take appropriate action and inform the notifying competent authority and ESMA of the outcome of the action and, to the extent possible, of significant interim developments.

(7) Without limiting subsections (1), (2) or (5), the FSC must notify ESMA and other competent authorities of the details of—

- (a) any request to reduce the size of a position or exposure made under section 85(2)(m); or
- (b) any limitation on the ability of a person to enter into a commodity derivative imposed under section 85(2)(n).

(8) A notification under subsection (7) must include (where relevant)—

- (a) the details of any request or demand for information made under section 85(2)(j), including the identity of the person to whom it was addressed and the reasons it was made;
- (b) the scope of the limits imposed under section 85(2)(n), including the identity of the person concerned;
- (c) the relevant financial instruments;
- (d) any limits imposed on the size of positions that the person may hold at all times; and

- (e) any exemption to those limits granted under section 74 and the reasons for the exemption.

(9) Other than in exceptional circumstances where it is not possible to do so, a notification under subsection (7) must be made at least 24 hours before the actions or measures are intended to take effect.

(10) Where the FSC receives a notification from another competent authority of a kind similar to one under subsection (7)–

- (a) it may take measures under section 85(2)(m) or (n) where it is satisfied that doing so is necessary to achieve the objective of the other competent authority; and
- (b) where it proposes to take any measures, must give notice in accordance with this section.

(11) Where any action under subsection (7)(a) or (b) relates to wholesale energy products, the FSC must also notify the Agency for the Cooperation of Energy Regulators (ACER) established under Regulation (EC) No 713/2009.

(12) The FSC must, in relation to–

- (a) emission allowances, cooperate with public bodies competent for the oversight of spot and auction markets and competent authorities, registry administrators and other public bodies charged with the supervision of compliance under Directive 2003/87/EC in order to ensure that they can acquire a consolidated overview of emission allowances markets; and
- (b) agricultural commodity derivatives, report to and cooperate with public bodies competent for the oversight, administration and regulation of physical agricultural markets under Regulation (EU) No 1308/2013.

(13) This section applies subject to any implementing technical standards adopted by the European Commission under Article 79(9) of MiFID.

#### **Cooperation between competent authorities.**

106.(1) The FSC may request the cooperation of the competent authority of another EEA State in a supervisory activity, for an on-the-spot verification or in an investigation.

(2) In the case of an investment firm which is a remote member or participant of a regulated market for which the FSC is the home State

competent authority, the FSC may contact the investment firm directly but, in that event, the FSC must inform the investment firm's home State competent authority that it has done so.

(3) Where the FSC receives a request with respect to an on-the-spot verification or investigation, it must within the framework of its powers—

- (a) carry out the verifications or investigations itself;
- (b) allow the requesting authority to carry out the verification or investigation;
- (c) allow auditors or experts to carry out the verification or investigation.

(4) This section applies subject to any regulatory technical standards or implementing technical standards adopted by the European Commission under Article 80(3) or (4) of MiFID.

#### **Exchange of information.**

107.(1) The FSC, in its capacity as the designated contact point under section 84(2), must immediately exchange with the competent authorities which under Article 79(1) of MiFID are designated contact points in other EEA States (a “designated contact point”) the information required for the purposes of carrying out their respective duties under this Act, MiFID or MiFIR.

(2) Where the FSC exchanges information under this Act or MiFIR with another designated contact point, the FSC may indicate at the time of communication that the information must not be disclosed without the FSC's express agreement.

(3) The FSC may transmit information it receives under subsection (1) or section 103 or 114 to other competent authorities but only on the basis that the information must not be transmitted to any other person—

- (a) without the express agreement of the designated contact point which disclosed it; and
- (b) solely for the purposes for which the designated contact point gives its agreement;

other than in duly justified circumstances (of which the FSC must immediately inform the designated contact point concerned).

(4) Any person receiving confidential information under subsection (1) or section 103 or 114 must 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 the Capital Requirements Directive, 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 competent authorities;
- (e) in appeal proceedings under section 99; or
- (f) in referring a consumer complaint to the Financial Services Ombudsman under section 100.

(5) This section applies subject to any implementing technical standards adopted by the European Commission under Article 81(4) of MiFID.

(6) Nothing in this section or in section 102 or 114 prevents the FSC from transmitting confidential information which is intended for the performance of their tasks–

- (a) to ESMA, the European Systemic Risk Board, central banks, the European System of Central Banks and the ECB, in their capacity as monetary authorities; and
- (b) where appropriate, to other public authorities responsible for overseeing payment and settlement systems.

**Binding mediation.**

108. The FSC may refer to ESMA any situation where a request relating to one of the following has been rejected or has not been acted upon within a reasonable time–

- (a) to carry out a supervisory activity, on-the-spot verification, or investigation, as provided for in Article 80 of MiFID; or

- (b) to exchange information as provided for in Article 81 of MiFID.

**Refusal to cooperate.**

109.(1). The FSC may refuse to act on a request from the competent authority of another EEA State for cooperation in carrying out an investigation, on-the-spot verification or supervisory activity as provided for in section 110 or to exchange information as provided for in section 107 where—

- (a) judicial proceedings have already been initiated in Gibraltar in respect of the same actions and the same persons; or
- (b) final judgement has already been delivered in Gibraltar in respect of the same persons and the same actions.

(2) In the event of a refusal, the FSC must notify the requesting competent authority and ESMA, providing as much information as possible.

**Consultation prior to authorisation.**

110.(1) The FSC must consult the competent authority of another EEA State before granting authorisation to an investment firm which is—

- (a) a subsidiary of an investment firm, market operator or credit institution authorised in that State;
- (b) a subsidiary of the parent undertaking of an investment firm or credit institution authorised in that State; or
- (c) controlled by the same individual or legal person who controls an investment firm or credit institution authorised in that State.

(2) The FSC must consult the competent authority of another EEA State which is responsible for the authorisation and supervision of a credit institution or insurance undertaking before granting authorisation to an investment firm or market operator which is—

- (a) a subsidiary of a credit institution or insurance undertaking authorised in the EEA;
- (b) a subsidiary of the parent undertaking of that credit institution or insurance undertaking authorised in the EEA; or

- (c) controlled by the same individual or legal person who controls that credit institution or insurance undertaking authorised in the EEA.

(3) The FSC must–

- (a) in particular, consult the competent authority of another EEA State when the FSC or that competent authority is assessing the suitability of the shareholders or members and the reputation and experience of persons who effectively direct the business involved in the management of another entity of the same group; and
- (b) exchange all information regarding the suitability of shareholders or members and the reputation and experience of persons who effectively direct the business which is of relevance to the FSC of the other competent authority for the granting of an authorisation as well as for the ongoing assessment of compliance with operating conditions.

(4) This section applies subject to any implementing technical standards adopted by the European Commission under Article 84(4) of MiFID.

#### **Powers as host State.**

111.(1) The FSC, in its capacity as host State competent authority, may require all investment firms with branches in Gibraltar to report to the FSC periodically on the activities of those branches for statistical purposes.

(2) The FSC may require branches of investment firms to provide the FSC with the information necessary for monitoring the compliance of those branches with the standards that apply to them under section 51(5).

(3) Any requirement imposed under this section by the FSC must not be more stringent than those imposed for the monitoring of compliance by established firms with the same standards.

#### **Precautionary measures as host State.**

112.(1) Where the FSC has clear and demonstrable grounds for believing that an investment firm which has a branch or is providing services in Gibraltar is infringing provisions of this Act which do not confer powers on the FSC as the host State competent authority, the FSC must refer its findings to the home State competent authority.

(2) If, despite the measures taken by the home State competent authority or because those measures prove inadequate, the investment firm persists in



acting in a manner that is clearly prejudicial to the interests of investors in Gibraltar or the orderly functioning of markets, the FSC must–

- (a) after informing the home State competent authority–
  - (i) take appropriate measures in order to protect investors and the proper functioning of the markets, which may include preventing the offending investment firm from initiating any further transactions in Gibraltar; and
  - (ii) without undue delay inform the European Commission and ESMA of the measures taken; or
- (b) refer the matter to ESMA, with a view to ESMA acting in accordance with its powers under Article 19 of Regulation (EU) No 1095/2010.

(3) Where the FSC ascertains that an investment firm that has a branch in Gibraltar is infringing provisions of this Act which confer powers on the FSC as the host State competent authority, the FSC must require the investment firm concerned to put an end to its irregular situation.

(4) If the investment firm concerned fails to take the necessary steps, the FSC must–

- (a) take appropriate measures to ensure that the investment firm concerned puts an end to its irregular situation; and
- (b) inform the home State competent authority of the nature of those measures taken.

(5) Where, despite the measures taken by the FSC, the investment firm persists in infringing the relevant provisions of this Act, the FSC–

- (a) after informing the home State competent authority, must–
  - (i) take appropriate measures in order to protect investors and the proper functioning of the markets; and
  - (ii) without undue delay inform the European Commission and ESMA of the measures taken; and
- (b) may refer the matter to ESMA, with a view to ESMA acting in accordance with its powers under Article 19 of Regulation (EU) No 1095/2010.

(6) Where the FSC, as host State competent authority of a regulated market, MTF or OTF, has clear and demonstrable grounds for believing that the regulated market, MTF or OTF is infringing provisions of this Act, the FSC must refer its findings to the home State competent authority of the regulated market, MTF or OTF.

(7) Where, despite the measures taken by the home State competent authority or because those measures prove inadequate, the regulated market, MTF or OTF persists in acting in a manner that is clearly prejudicial to the interests of investors in Gibraltar or the orderly functioning of markets, the FSC—

- (a) after informing the home State competent authority, must—
  - (i) take appropriate measures in order to protect investors and the proper functioning of the markets, which may include preventing the regulated market, MTF or OTF from making their arrangements available to remote members or participants established in Gibraltar; and
  - (ii) without undue delay inform the European Commission and ESMA of the measures taken; and
- (b) may refer the matter to ESMA, with a view to ESMA acting in accordance with its powers under Article 19 of Regulation (EU) No 1095/2010.

(8) Any sanction or restriction imposed by the FSC under this section on the activities of an investment firm, regulated market, MTF or OTF must be properly justified and communicated to the investment firm or regulated market concerned.

(9) If the FSC—

- (a) proposes to impose any sanction or restriction under this section, it must give the investment firm, regulated market, MTF or OTF concerned a warning notice; and
- (b) decides to impose any sanction or restriction under this section, it must give the investment firm, regulated market, MTF or OTF concerned a decision notice.

#### **Cooperation and exchange of information with ESMA.**

113. The FSC must—

- (a) cooperate with ESMA for the purposes of MiFID, in accordance with Regulation (EU) No 1095/2010; and
- (b) without undue delay provide ESMA with any information necessary to carry out its duties under MiFID or MiFIR, in accordance with Articles 35 and 36 of Regulation (EU) No 1095/2010.

*Cooperation with third countries*

**Exchange of information with third countries.**

114.(1) The Government may conclude cooperation agreements providing for the exchange of information with–

- (a) the competent authorities of third countries; and
- (b) other authorities, bodies and persons in third countries which are responsible for–
  - (i) the supervision of credit institutions, other financial institutions, insurance undertakings or the supervision of financial markets;
  - (ii) the insolvency, administration, receivership or liquidation of investment firms or other similar procedures;
  - (iii) the carrying out of statutory audits of the accounts of investment firms or other financial institutions, credit institutions or insurance undertakings, in the performance of their supervisory functions, or which administer compensation schemes, in the performance of their functions;
  - (iv) oversight of the bodies involved in the insolvency, administration, receivership or liquidation of investment firms or other similar procedures;
  - (v) oversight of persons charged with carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment firms or other financial institutions;
  - (vi) oversight of persons active on emission allowance markets for the purpose of ensuring a consolidated overview of financial and spot markets; and

- (vii) oversight of persons active on agricultural commodity derivatives markets for the purpose of ensuring a consolidated overview of financial and spot markets.

(2) A cooperation agreement under subsection (1) may only be concluded if–

- (a) the exchange of information is intended for the performance of the tasks of the competent authorities and other entities specified in that subsection in Gibraltar and the third country concerned; and
- (b) the information exchanged is subject to guarantees of professional secrecy at least equivalent to those required under section 102.

(3) Any transfer of personal data under this section to a third country must be in accordance with Part VI of the Data Protection Act 2004 and Regulation (EC) No 45/2001.

(4) The FSC may not disclose information under this section which originates from the competent authority in another jurisdiction except–

- (a) with the express agreement of that competent authority; and
- (b) where appropriate, solely for the purposes for which agreement was given by that authority.

## **PART 7** **REGULATION (EU) No 600/2014**

### **Application of MiFIR.**

115.(1) Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 ("MiFIR") has effect in Gibraltar subject to this Part.

(2) In accordance with Articles 15(1) and 18(4) of MiFIR, an investment firm must notify the FSC in writing if the firm falls within the definition of a systematic internaliser.

(3) The FSC must transmit to ESMA any notification which the FSC receives under subsection (2).

(4) Third-country firms are not permitted to provide investment services or perform investment activities together with ancillary services in or from Gibraltar under the fifth paragraph of Article 46(4) of MiFIR.

(5) Article 46 of MiFIR does not apply to a third-country firm providing an investment service or activity which is initiated at the client's exclusive initiative by an eligible counterparty or professional client (within the meaning of Section I of Schedule 2) established or situated in Gibraltar.

(6) Subsection (5) extends to the relationship between a third-country firm and a client specifically relating to the provision of the investment service or activity in question, but does not entitle a third-country firm to market new categories of investment services or products to that client.

## PART 8 FINAL PROVISIONS

### **Transitional provisions.**

116.(1) Each of the following, if it has effect on the day before this section comes into operation, is to continue to have effect and be treated as if it was granted or made under this Act—

- (a) authorisation of an investment firm granted by the FSC under section 6 of the Financial Services (Markets in Financial Instruments) Act 2006;
- (b) authorisation of a regulated market granted by the FSC under section 36 of that Act; and
- (c) any decision made by the FSC under—
  - (i) section 9 of that Act, in respect of the good repute and experience of a person directing a business; or
  - (ii) section 10 of that Act, in respect of the suitability of a person to have a qualifying holding in a business.

### **Transitional exemption for certain C6 energy derivative contracts.**

117.(1) The FSC, on the application of a relevant party, may grant a transitional exemption on the terms specified in Article 95 of MiFID in respect of any C6 energy derivative contract which qualifies for the transitional regime set out in that Article.

(2) The FSC must notify ESMA of any exemption which the FSC grants under subsection (1).

**References to previous Act and Directives.**

118. A reference in any law to—

- (a) the Financial Services (Markets in Financial Instruments Act) 2006 is to be construed as a reference to this Act;
- (b) any provision of Directive 2004/39/EC or Directive 93/22/EEC is to be construed as a reference to MiFID or MiFIR and read in accordance with the correlation table set out in Annex IV to MiFID; or
- (c) any term defined in Directive 2004/39/EC or Directive 93/22/EEC is to be construed as a reference to the equivalent defined term in MiFID.

**Regulations.**

119.(1) The Minister may by regulations prescribe anything requiring to be prescribed and generally do anything requiring to be done under this Act or to give further effect to MiFID and MiFIR.

(2) Without limiting subsection (1), the Minister may by regulations—

- (a) provide for authorisation applications, fees, forms and offences as the Minister considers appropriate for the effective execution of this Act and the discharge of the FSC's functions under it;
- (b) amend the Schedules; and
- (c) make any provision that the Minister considers appropriate in cases where an authorisation condition has been breached, including penalties, the suspension or withdrawal of authorisation or other sanctions.

**Codes of practice.**

120.(1) The FSC, with the consent of the Minister, may issue one or more codes of practice containing the criteria to which the FSC refers in exercising its functions under this Act, including, in particular, its powers to grant, suspend or withdraw authorisations.

(2) Any code issued under this section is admissible in evidence in criminal or civil proceedings and, if any provision of a code appears to the court or

tribunal conducting the proceedings to be relevant to any question arising in the proceedings, it must be taken into account in determining that question.

**SCHEDULE 1****LISTS OF SERVICES AND ACTIVITIES  
AND FINANCIAL INSTRUMENTS****Section A: Investment services and activities**

- A1. Reception and transmission of orders in relation to one or more financial instruments.
- A2. Execution of orders on behalf of clients.
- A3. Dealing on own account.
- A4. Portfolio management.
- A5. Investment advice.
- A6. Underwriting of financial instruments or placing of financial instruments on a firm commitment basis.
- A7. Placing of financial instruments without a firm commitment basis.
- A8. Operation of an MTF.
- A9. Operation of an OTF.

**Section B: Ancillary services**

- B1. Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash or collateral management and excluding maintaining securities accounts at the top tier level (“central maintenance service”) referred to in point (2) of Section A of the Annex to the Regulation (EU) No 909/2014.
- B2. Granting credits or loans to an investor to allow the investor to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction.
- B3. Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings.
- B4. Foreign exchange services where these are connected to the provision of investment services.



B5. Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments.

B6. Services related to underwriting.

B7. Investment services and activities as well as ancillary services of the type included under Section A or B related to the underlying of the derivatives included under paragraphs C5, C6, C7 and C10 where these are connected to the provision of investment or ancillary services.

**Section C: Financial instruments**

C1. Transferable securities.

C2. Money-market instruments.

C3. Units in collective investment undertakings.

C4. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, emission allowances or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash.

C5. Options, futures, swaps, forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event.

C6. Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market, a MTF, or an OTF, except for wholesale energy products traded on an OTF that must be physically settled.

C7. Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in paragraph C6 and not being for commercial purposes, which have the characteristics of other derivative financial instruments.

C8. Derivative instruments for the transfer of credit risk.

C9. Financial contracts for differences.

C10. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event, as well as any other derivative contracts

relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Section, which have the characteristics of other derivative financial instruments, having regard to whether, among other things, they are traded on a regulated market, OTF, or an MTF.

C11. Emission allowances consisting of any units recognised for compliance with the requirements of Directive 2003/87/EC (Emissions Trading Scheme).

**Section D: Data reporting services**

- D1. Operating an APA.
- D2. Operating a CTP.
- D3. Operating an ARM.

**SCHEDULE 2****PROFESSIONAL CLIENTS**

A professional client is a client who possesses the experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs.

In order to be considered to be a professional client, a client must meet the following criteria—

**Section I: Categories of client who are considered to be professionals**

The following shall all be regarded as professionals in all investment services and activities and financial instruments for the purposes of this Act.

(1) Entities which are required to be authorised or regulated to operate in the financial markets. The list below includes all authorised entities carrying out the characteristic activities of the entities mentioned, including entities authorised by an EEA State under a Directive, entities authorised or regulated by an EEA State without reference to a Directive, and entities authorised or regulated by a third country—

- (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) local businesses;
- (i) other institutional investors;

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

- (a) balance sheet total: EUR 20,000,000;

- (b) net turnover: EUR 40,000,000;
- (c) own funds: EUR 2,000,000.

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

(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 referred to 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 investment firm, the client is deemed to be a professional client, and will be treated as such unless the investment firm and the client agree otherwise. The investment 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 shall specify whether this applies to one or more particular services or transactions, or to one or more types of product or transaction.

## **Section II. Clients who may be treated as professionals on request**

### ***Identification criteria***

Clients other than those mentioned in section I, including public sector bodies, local public authorities, municipalities and private individual investors, may also be allowed to waive some of the protections afforded by the conduct of business rules.

Investment firms shall therefore be allowed to treat any of those clients as professionals provided the relevant criteria and procedure mentioned below are fulfilled. Those clients shall not, however, be presumed to possess

market knowledge and experience comparable to that of the categories listed in Section I.

Any such waiver of the protection afforded by the standard conduct of business regime shall be considered to be valid only if an adequate assessment of the expertise, experience and knowledge of the client, undertaken by the investment firm, gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making investment decisions and understanding the risks involved.

The fitness test applied to managers and directors of entities licensed under Directives in the financial field could be regarded as an example of the assessment of expertise and knowledge. In the case of small entities, the person subject to that assessment shall be the person authorised to carry out transactions on behalf of the entity.

In the course of that assessment, as a minimum, two of the following criteria shall be satisfied:

- 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;
- the size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments exceeds EUR 500 000;
- the client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.

### ***Procedure***

Those clients may waive the benefit of the detailed rules of conduct only where the following procedure is followed:

- 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;
- the investment firm must give them a clear written warning of the protections and investor compensation rights they may lose;
- they must state in writing, in a separate document from the contract, that they are aware of the consequences of losing such protections.

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 Section II.

However, if clients have already been categorised as professionals under parameters and procedures similar to those referred to above, it is not intended that their relationships with investment firms shall be affected by any new rules adopted pursuant to this Annex.

Firms must implement appropriate written internal policies and procedures to categorise clients. Professional clients are responsible for keeping the investment 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 shall take appropriate action.