Subsidiary Legislation made under ss.6(1), 44(4), 59(3), 61(1), 63(3), 64(3), 83(1), 150(1), 164(1), 166(2), 167(3), 620(1), 621(1), 623 and 627 of, and paragraphs 6 and 7 of Schedule 10.

# FINANCIAL SERVICES (INVESTMENT SERVICES) REGULATIONS 2020

## LN.2020/041

*Commencement* **15.1.2020**

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**ARRANGEMENT OF REGULATIONS.**

Regulation

## PART 6
## NOTIFICATION AND REPORTING



## PART 7
## FREEDOM OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES

### Chapter 1
### EEA firms



*Branch etc business*



*Services business*



### Chapter 2
### Gibraltar firms



*Branch etc business*

**2019-26** Financial Services

**2020/041** **FINANCIAL SERVICES (INVESTMENT SERVICES) REGULATIONS 2020**

This version is out of date

*In exercise of the powers conferred on the Minister by sections 6(1), 44(4), 59(3), 61(1), 63(3), 64(3), 83(1), 150(1), 164(1), 166(2), 167(3), 620(1), 621(1), 623 and 627 of, and paragraphs 6 and 7 of Schedule 10 to, the Financial Services Act 2019, as read with section 23(g)(i) of the Interpretation and General Clauses Act, and on the Government by section 23(g)(ii) of that Act and by all other enabling powers, the Minister and the Government have made the following Regulations.*

## PART 1
## PRELIMINARY

**Title, commencement and saving.**

1.(1) These Regulations may be cited as the Financial Services (Investment Services) Regulations 2020.

(2) These Regulations come into operation on the day of publication.

(3) Any transitional exemption in respect of any C6 energy derivative contract–

(a) which was granted by the GFSC under section 117(1) of the Markets in Financial Instruments Act 2018, on the terms specified in Article 95 of the MiFID 2 Directive; and

(b) which has effect immediately before the date specified in sub-regulation (2),

continues to have effect on and after that date until 3 January 2021.

**Interpretation.**

2.(1) In these Regulations, unless the context otherwise requires–

"the Act" means the Financial Services Act 2019;

"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 the purposes of this definition, 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;

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

"certificates" has the meaning given in MiFIR;

"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 the purposes of this paragraph 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 (within the meaning of paragraph (b);

"competent authority" means–

(a) in Gibraltar, the GFSC; and

(b) in an EEA State, an authority designated in that State under Article 67 of the MiFID 2 Directive;

"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;

"depositary 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;

"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;

"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;

(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; or

(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;

"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;

"local firm" has the meaning given in regulation 4(1);

"management body"–

(a) means the board of directors, committee of management or other body of an investment firm or market operator which is empowered to set the strategy, objectives and overall direction of the firm or the operator, and which oversees and monitors management decision-making; and

(b) includes persons who effectively direct the business of the firm or operator;

"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;

"Part 7 permission" means permission under Part 7 of the Act;

"professional client" means a client meeting the criteria laid down in the Schedule;

"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 authorizing 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);

"the Register" or "the GFSC Register" means the register which is established by the GFSC in accordance with both Part 4 of the Act and, in relation to investment services and investment activities, regulation 110;

"relevant business", in relation to a tied agent appointed by an investment firm under Chapter 3, has the meaning given in regulation 23(3)(a);

"relevant EEA firm" has the meaning given in regulation 78;

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

"securities financing transaction" has the meaning given in the SFTR Regulation;

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

"structured finance products" has the meaning given in MiFIR;

"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;

"UCITS management company" means a management company of a UCITS scheme, within the meaning of Part 18 of the Act;

"UCITS scheme" has the meaning given in Part 18 of the Act.

(2) Without limiting the application of section 21 of the Interpretation and General Clauses Act, any expression used in these Regulations which is used in Schedule 2 to the Act has the same meaning as it has for the purposes of that Schedule.

(3) Accordingly, in these Regulations, the expressions listed in the first column of the table below are defined or otherwise explained by the provisions in Schedule 2 to the Act which are listed in the second column–

| *Expression* | *Provision of Schedule 2* to the Act |
|---|---|
| **algorithmic trading** | Paragraph 44 |
| **ancillary services** | Paragraph 44 |
| **APA(approved publication arrangement)** | Paragraph 87(2) |
| **ARM (approved reporting mechanism** | Paragraph 89(2) |
| **client** | Paragraph 44 |
| **Commodity** | Paragraph 44 |
| **commodity derivatives** | Paragraph 44 |
| **CTP (consolidated tape provider)** | Paragraph 88(2) |
| **dealing on own account** | Paragraph 50 |
| **derivatives** | Paragraph 44 |
| **direct electronic access** | Paragraph 61 |

| | |
|---|---|
| **execution of orders on behalf of clients** | Paragraph 49 |
| **financial instrument** | Paragraph 44 |
| **high-frequency algorithmic trading technique** | Paragraph 44 |
| **investment advice** | Paragraph 52 |
| **investment services and activities** | Paragraph 44 |
| **market maker** | Paragraph 44 |
| **market operator** | Paragraph 1 |
| **money market instruments** | Paragraph 1 |
| **multilateral system** | Paragraph 1 |
| **MTF (multilateral trading facility)** | Paragraph 55 |
| **OTF (organised trading facility)** | Paragraph 56 |
| **portfolio management** | Paragraph 51 |
| **regulated market** | Paragraph 1 |
| **sovereign debt** | Paragraph 69 |
| **sovereign issuer** | Paragraph 69 |
| **structured deposit** | Paragraph 77 |
| **systematic internaliser** | Paragraph 81 |
| **trading venue** | Paragraph 1 |
| **transferable securities** | Paragraph 44 |

**Delegated Acts relevant to certain exclusions.**

3.(1) A determination as to whether an activity is provided in an incidental manner for the purposes of paragraph 60 of Schedule 2 to the Act must take account of any delegated acts adopted by the European Commission under Article 2(3) of the MiFID 2 Directive.

(2) A determination as to whether an activity is to be considered as ancillary to the main business at a group level for the purposes of paragraph 62(3)(a) of Schedule 2 to the Act must take account of any regulatory technical standards adopted by the European Commission under Article 2(4) of the MiFID 2 Directive.

**Application: investment firms, trading venues and others.**

4.(1) These Regulations apply to–

(a) regulated firms which are investment firms;

(b) regulated firms which are market operators;

(c) EEA firms which have exercised an EEA right deriving from the MiFID 2 Directive; and

(d) regulated firms which–

(i) are third-country firms; and

(ii) carry on any investment service or investment activity through the establishment of a branch in Gibraltar.

(2) Regulation 35 also applies to members or participants of regulated markets and MTFs who by virtue of paragraph 58, 61, 63 or 65 of Schedule 2 to the Act are not required to hold Part 7 permission to carry on investment services or investment activities.

(3) A multilateral system in financial instruments must operate in accordance with either–

(a) the provisions concerning MTF's or OTFs in–

(i) Chapter 2 of Part 2;

(ii) Chapter 1 of Part 3; and

(iii) Chapters 1 and 3 of Part 4; or

(b) the provisions concerning regulated markets in–

(i) Chapter 3 of Part 2;

(ii) Chapter 2 of Part 3; and

(iii) Chapters 2 and 3 of Part 4.

(4) 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.

(5) Without limiting Articles 23 and 28 of MiFIR, any transactions in financial instruments referred to in sub-regulation (3) or (4) which are not concluded on multilateral systems or systematic internalisers must comply with the relevant provisions of Title III of MiFIR.

(6) Regulations 68 (position limits and position management controls in commodity derivatives) and 69 (position reporting by categories of position holders) also apply to–

(a) exempt persons within regulation 9(1); and

(b) persons carrying on activities which, by virtue of paragraphs 58 to 68 of Schedule 2 to the Act, are excluded from being investment services or investment activities.

(7) The rights conferred by these Regulations 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 TFEU 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.

**Application: credit institutions.**

5.(1) The provisions of these Regulations listed in sub-regulation (2) apply to regulated firms which are credit institutions when carrying on investment services or investment activities.

(2) The applicable provisions are–

(a) regulation 4(7);

(b) regulation 15;

(c) Chapter 1 of Part 3;

(d) Chapter 1 of Part 4 other than regulation 51(1), (2) and (7);

(e) regulations 63 to 66;

(f) regulation 73;

(g) regulation 75;

(h) regulation 77;

(i) Part 7, in so far as it applies to credit institutions;

(j) Part 8;

(k) regulations 113 and 114; and

(l) regulation 119.

(3) For the purposes of sub-regulation (2), a reference in regulations 30 to 34, 37 to 39, 53 to 55 or 75 to-

(a) an investment firm is to be read as including a reference to a credit institution; and

(b) a financial instrument is to be read as a reference to a structured deposit.

**Application: regulated activities in relation to structured deposits.**

6.(1) The provisions of these Regulations listed in sub-regulation (2) apply to regulated firms when selling or advising clients in relation to structured deposits if the firm-

(a) is an investment firm or credit institution; and

(b) has Part 7 permission that includes the regulated activity specified in Part 7 of Schedule 2 to the Act.

(2) The applicable provisions are–

(a) regulation 15;

(b) regulations 23 to 28;

(c) regulation 29(1);

(d) regulations 30 to 34;

(e) regulations 36 to 41;

(f) regulation 43;

(g) regulation 44;

(h) regulation 51(3) to (6);

(i) regulation 52(2) to (9);

(j) regulations 53 to 56;

(k) regulation 75;

(l) Part 8; and

(m) regulation 113.

(3) For the purposes of sub-regulation (2), a reference in regulations 30 to 34, 37 to 39, 48 to 55 or 75 to-

(a) an investment firm or firm is to be read as including a reference to a credit institution; and

(b) a financial instrument is to be read as a reference to a structured deposit.

**Application: UCITS management companies and AIFMs.**

7.(1) The provisions of these Regulations listed in sub-regulation (2) apply to regulated firms which are–

(a) UCITS management companies providing services in accordance with regulation 10 of the Financial Services (UCITS) Regulations 2020; and

(b) AIFMs providing services in accordance with regulation 12(4) of the Financial Services (Alternative Investment Fund Managers) Regulations 2020.

(2) The applicable provisions are–

(a) regulations 30 to 34;

(b) regulations 37 to 39;

(c) regulation 53 to 55; and

(d) regulation 75.

**Application: local firms.**

8.(1) In this regulation a "local firm" means an investment firm which–

(a) has been given Part 7 permission to carry on one or more regulated activities of providing investment services or performing investment activities; and

(b) is identified as a local firm in the GFSC Register.

(2) The Act and these Regulations apply to a local firm only as provided for in this regulation and in any other regulations made under Part 29 of the Act in relation to local firms.

(3) Where the GFSC gives Part 7 permission to a local firm, the GFSC must–

(a) specify the investment services referred to in sub-regulation (4)(b) to which the permission relates;

(b) under section 67(4)(a) of the Act, incorporate the limitations specified in sub-regulation (4)(a), (c) and (5);

(c) include a statement to the effect that the permission is given in accordance with Article 3 of the MiFID 2 Directive; and

(d) identify the firm as a local firm in the Register.

(4) A 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 which are regulated firms or are otherwise authorised in accordance with the MiFID 2 Directive;

(ii) credit institutions which are regulated firms or are otherwise 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 GFSC to be at least as stringent as those laid down in the MiFID 2 Directive, the Capital Requirements Regulation or the Capital Requirements Directive;

(iv) collective investment undertakings authorised under Part 18 of the Act or under the law of another 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.

(5) A local firm is not entitled to exercise the freedom to provide services or establish branches as provided for in Chapter 2 of Part 7.

(6) A 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;

(iii) exercise joint control; and

(iv) would fall within paragraph 62 of Schedule 2 to the Act if they were to carry on 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;

(iii) exercise joint control; and

(iv) would fall within paragraph 62 of Schedule 2 to the Act (own-account dealing in commodity derivatives etc.) if they were to carry on those investment services themselves.

(7) The following provisions of these Regulations apply to local firms as they apply to other investment firms–

(a) regulations 15, 17 and 18;

(b) regulations 23 to 28;

(c) regulation 29(1) to (9);

(d) regulation 36(1), (4) to (8), (10) to (12) and (16);

(e) regulation 40(4), (5), (10) to (14);

(f) regulations 51 and 52(3), (8) and (9); and

(g) regulation 56, 73 and 114.

(8) A local firm which has Part 7 permission must at all times comply with the requirements in this regulation.

(9) For the purposes of this regulation, a reference in a provision listed in sub-regulation (7) to an investment firm or firm must be read where necessary as a reference to a local firm.

**Exempt persons in respect of investment services and activities.**

9.(1) The following are exempt from the general prohibition in respect of any regulated activities which are investment services or investment activities–

(a) the members of the European System of Central Banks;

(b) other national bodies performing similar functions in the Union;

(c) other public bodies charged with or intervening in the management of the public debt in the Union;

(d) international financial institutions established by two or more Member 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.

(2) Sub-regulation (3) applies to any tied agent of–

(a) an investment firm;

(b) a credit institution; or

(c) a local firm,

and any firm or institution within paragraphs (a) to (c) is referred to in sub-regulation (3) as a "relevant firm".

(3) A tied agent of a relevant firm is exempt from the general prohibition in relation to any regulated activity which is an investment service or investment activity and which is comprised in the activities of the tied agent if–

(a) the relevant firm accepts full and unconditional responsibility for any act or omission of the tied agent when carrying out the tied agent's activities on behalf of the firm; and

(b) the requirements of regulations 23 to 28 are met.

## PART 2
## THRESHOLD CONDITIONS

### Chapter 1
### General.

**Introduction to Part 2.**

10.(1) This Part includes provisions which supplement the threshold conditions as they apply to–

(a) investment firms applying for Part 7 permission to carry on investment services or activities;

(b) investment firms which are regulated firms with Part 7 permission to carry on such services or activities;

(c) market operators applying for Part 7 permission to operate a regulated market; and

(d) market operators which are regulated firms with Part 7 permission to operate a regulated market.

(2) Each application for permission in accordance with section 76 of the Act must, among other things, include a programme of operations setting out the types of business envisaged by the applicant and the applicant's organisational structure.

(3) The GFSC must not give Part 7 permission to carry on any investment service or investment activity, or to operate a regulated market, unless the GFSC is satisfied that the applicant meets, and will continue to meet, all requirements imposed on investment firms under the Act or these Regulations.

(4) An investment firm or market operator which has Part 7 permission must at all times comply with the threshold conditions and these Regulations.

**Consultation with competent authorities before giving permission.**

11.(1) The GFSC must consult the competent authority of another EEA State before giving Part 7 permission 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 GFSC 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 giving Part 7 permission 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 GFSC must–

(a) in particular, consult the competent authority of another EEA State when the GFSC or that other competent authority is assessing the suitability of controllers 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 controllers and the reputation and experience of persons who effectively direct the business which is of relevance to the GFSC or the other competent authority–

(i) for the giving of Part 7 permission by the GFSC or granting of authorisation by that competent authority; or

(ii) for the ongoing assessment of compliance with operating conditions.

(4) This regulation applies subject to any implementing technical standards adopted by the European Commission under Article 84.4 of the MiFID 2 Directive.

## Chapter 2
## Investment firms

**Scope of permission: investment firms.**

12.(1) Where the GFSC gives Part 7 permission to an investment firm, it must ensure that the permission specifies the investment services or activities to which the permission relates.

(2) A permission may extend to one or more of the ancillary services set out in paragraph 45 of Schedule 2 to the Act but a permission may not be granted solely for the provision of such ancillary services.

(3) An investment firm seeking permission to extend its business to additional investment services or activities or ancillary services not foreseen at the time of its initial application for permission must make an application to the GFSC under section 68 of the Act to vary the investment firm's permission.

(4) For the purposes of the Act, an investment firm which is a regulated firm with permission to carry on any investment service or investment activity is an "authorised person" by virtue of section 54 of the Act and that authorisation–

(a) is valid for the entire EEA; and

(b) subject to compliance with the requirements of Chapter 2 of Part 7 of these Regulations, allows the firm to provide throughout the EEA the services or

activities for which it has permission, either through the right of establishment, including through a branch, or through the freedom to provide services.

(5) Sub-regulation (4) does not apply to an authorisation granted to a local firm.

(6) The requirements of this Chapter are subject to any regulatory technical standards or implementing technical standards adopted by the European Commission under Article 7.4 or 7.5 of the MiFID 2 Directive.

**Location of offices.**

13. An investment firm–

(a) must have its head office and registered office in Gibraltar; or

(b) if it has no registered office, must have its head office and carry on business in Gibraltar.

**Capital requirements.**

14.(1) An investment firm must meet the initial capital requirements for investment firms set out in Chapter 3 of Part 2 of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020 and the Capital Requirements Regulation, having regard to the nature of the investment service or investment activity in question.

(2) Ongoing capital requirements to be met by an investment firm are specified in regulation 70.

**Membership of investor compensation scheme.**

15.(1) An investment firm must meet its obligations under Part 16 of the Act.

(2) The obligation under sub-regulation (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 the DGS Directive.

**Non-executive directorships.**

16.(1) The GFSC, when giving an investment firm Part 7 permission, may decide to allow a member of the management body of the firm to hold one more non-executive directorship than is specified by Article 91.3 of the Capital Requirements Directive.

(2) The GFSC must inform ESMA regularly of any decision made under sub-regulation (1).

**Management body.**

17. The GFSC must refuse Part 7 permission to an investment firm if–

(a) the GFSC 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 firm; or

(b) the GFSC have 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.

**Controllers and close links.**

18.(1) The GFSC must not give Part 7 permission to an investment firm until the GFSC has been informed of–

(a) the identities of the controllers of the firm; and

(b) the size of their holdings.

(2) The GFSC must refuse to give permission if, taking into account the need to ensure the sound and prudent management of an investment firm, the GFSC is not satisfied as to the suitability of the controllers of the firm.

(3) Where close links exist between an investment firm and other persons, the GFSC may give Part 7 permission only if, in the opinion of the GFSC, those links do not prevent the effective exercise of its regulatory functions.

(4) The GFSC must refuse permission if it would be prevented from exercising its regulatory functions effectively by–

(a) the laws, regulations or administrative provisions of a country or territory outside of the EEA governing one or more persons with which a firm has close links; or

(b) the difficulties involved in enforcing those measures.

(5) Where the GFSC has reasonable grounds for considering that the influence exercised by a controller is likely to be prejudicial to the sound and prudent management of an investment firm, the GFSC may take appropriate steps to resolve that situation.

(6) The steps which the GFSC may take under sub-regulation (5) include–

(a) imposing sanctions on the directors and other persons responsible for the management of the investment firm;

(b) directing that the voting rights exercisable by the controller in question are to be suspended; or

(c) applying to the Supreme Court for an order.

**Specific information requirements for OTFs.**

19.(1) Sub-regulation (2) applies when an investment firm or market operator seeks Part 7 permission for the operation of an OTF and from time to time.

(2) The GFSC may require the investment firm or market operator to provide the GFSC 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.

## Chapter 2
## Regulated markets

**General requirements: regulated markets and market operators.**

20.(1) The GFSC–

(a) may only give Part 7 permission for the operation of a system as a regulated market if the system complies with the requirements of–

(i) this Chapter;

(ii) Chapter 2 of Part 3;

(iii) Chapter 2 of Part 4;

(iv) regulations 67 to 69, 71, 73 and 74; and

(b) may only give Part 7 permission for the operation of a regulated market if it is satisfied that both the market operator and the systems of the regulated market comply with those requirements.

(2) An application to the GFSC for Part 7 permission to operate a regulated market must be accompanied by all the information the GFSC may require (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 the permission is given, all the necessary arrangements to meet its obligations under this Part.

(3) Subject to sub-regulation (4), the GFSC must refuse to give permission for the operation of a regulated market if–

(a) it is not satisfied that the members of the management body of the market operator 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.

(4) In relation to an application for permission to operate a regulated market, the GFSC must regard the requirements of sub-regulation (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 the MiFID 2 Directive.

(5) Part 7 permission to operate a regulated market is subject to the condition that the market operator must perform tasks relating to the organisation and operation of the regulated market under the supervision of the GFSC.

(6) The operator of a regulated market must–

(a) provide the GFSC 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) provide the GFSC 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.

(7) Any person who is in a position to exercise, directly or indirectly, significant influence over the management of a regulated market must be approved by the GFSC as being suitable to do so.

**Financial resources.**

21.(1) A regulated market must have available, at the time Part 7 permission is given 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) In giving Part 7 permission to a market operator, the GFSC may impose a requirement under section 70 of the Act which specifies a level of minimum initial capital which is higher than the market operator's own assessment of the sufficient amount of initial capital required for compliance with sub-regulation (1).

**Market operator operating an MTF or OTF.**

22.(1) A regulated firm which is a market operator may apply to vary its Part 7 permission so as to include operating an MTF or OTF.

(2) Before varying a market operator's permission so as to include operating an MTF or OTF, the GFSC must ensure that market operator complies with the following provisions of these Regulations–

(a) regulations 14 and 15;

(b) regulations 17 to 19;

(c) regulation 35;

(d) regulations 53 and 54;

(e) regulation 58;

(f) regulation 60;

(g) regulation 63 to 65; and

(h) regulation 74.

(3) For the purposes of this regulation, a reference in a provision listed in sub-regulation (2) to an investment firm or firm must be read where necessary as a reference to a market operator.

## PART 3
## CONDUCT OF BUSINESS

### Chapter 1
### Investment firms

*Tied agents*

**Obligations of investment firm when appointing tied agents.**

23.(1) An investment firm may appoint one or more tied agents for the purposes of–

(a) promoting the services of the firm to clients or potential clients;

(b) soliciting business from clients or potential clients;

(c) receiving and transmitting orders from clients in respect of investment services or financial instruments;

(d) placing financial instruments; or

(e) providing advice to clients or potential clients in respect of those financial instruments or services.

(2) A firm may only appoint a tied agent who–

(a) if the tied agent is established in an EEA State, is entered as a tied agent on the register maintained in that State pursuant to article 29.3 of the MiFID 2 Directive;

(b) otherwise, is entered on the GFSC Register as a tied agent.

(3) An investment firm which appoints a tied agent must–

(a) accept full and unconditional responsibility in writing for any act or omission of the tied agent when carrying on an activity within sub-regulation (2) to which the agent's appointment relates ("the relevant business");

(b) ensure that the tied agent is of sufficiently good repute and possesses appropriate general, commercial and professional knowledge so as to be able to carry on relevant business on the firm's behalf;

(c) monitor the activities of the tied agent so as to ensure that, when the firm is acting through the agent, the firm continues to comply with–

(i) any qualifying EU provision; and

(ii) provisions contained in or made under the Act;

(d) take adequate measures to prevent any other activities of the tied agent having a negative impact on the relevant business carried out by the tied agent on the firm's behalf;

(e) ensure that the tied agent discloses the capacity in which the agent is acting, and the firm which the agent is representing, when contacting or before dealing with any client or potential client.

(4) In sub-regulation (3)(c), "qualifying EU provision" means a provision of–

(a) a directly applicable EU regulation, as amended from time to time (unless otherwise stated); or

(b) an EU decision for whose enforcement Gibraltar is required by an EU obligation to make provision (and for these purposes "EU decision" means a decision under an EU Directive or EU Regulation).

**Obligations of tied agent.**

24.(1) A tied agent must not–

(a) represent other counterparties; or

(b) hold client money or financial instruments belonging to clients.

(2) A tied agent appointed by an EEA firm is subject to the provisions of these Regulations relating to branches.

**Responsibility of investment firm for tied agent: general.**

25.(1) Where an investment firm appoints a tied agent, the firm remains fully and unconditionally responsible for any act or omission of the tied agent when acting on the firm's behalf.

(2) In determining whether a firm has complied with any provision referred to in regulation 23(3)(c), anything which a relevant person has done or omitted in respect to business for which the firm has accepted responsibility is to be treated as having been done or omitted by the firm.

(3) In sub-regulation (2), the reference to a "relevant person" is to a person who at the material time is or was a tied agent of the firm, appointed in accordance with regulation 23(1).

(4) Nothing in sub-regulation (3) is to cause the knowledge or intentions of a tied agent to be attributed to the firm for the purposes of determining whether the firm has committed an offence, unless in all the circumstances it is reasonable for them to be attributed to the firm.

**Responsibility of investment firm for tied agent outside Gibraltar.**

26.(1) In this regulation "relevant office" means–

(a) in relation to a body corporate, its registered office or, if it has no registered office, its head office; and

(b) in relation to a person other than a body corporate, the person's head office.

(2) Sub-regulation (3) applies to an investment firm whose relevant office is in Gibraltar if–

(a) the firm has appointed a tied agent who is established in Gibraltar or in an EEA state to carry on the relevant business on behalf of the firm; and

(b) the GFSC is satisfied that no such business is, or is likely to be, carried on by the agent in Gibraltar.

(3) The firm is to be taken for the purposes of the Act to have contravened a requirement imposed on that firm by or under the Act if the firm–

(a) makes or continues an appointment with an agent who does not–

(i) make the disclosures specified in regulation 23(3)(e); or

(ii) comply with regulation 24;

(b) makes or continues with such an appointment without accepting or having accepted responsibility for the agent's activities in carrying on the relevant business;

(c) makes an appointment with an agent who is not entered on one of the registers referred to in regulation 23(2); or

(d) continues an appointment with an agent when the firm knows or ought to know that the agent is not entered on any such register.

**Registration of tied agents.**

27.(1) An application for the registration of a tied agent in the GFSC Register–

(a) may only be made by the 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 GFSC may direct; and

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

(2) The GFSC may only admit a person to the Register if the GFSC is satisfied that the person–

(a) is of sufficiently good repute; and

(b) possesses the general, commercial and professional knowledge and competence so as to be able to–

(i) carry on the relevant business; and

(ii) communicate accurately all relevant information regarding the proposed business to clients or potential clients.

(3) If the GFSC proposes to admit a person to the Register it must give written notice to the person and to the firm concerned.

(4) If the GFSC–

(a) proposes to refuse a registration application, it must give a warning notice to the person and to the firm concerned; or

(b) decides to refuse a registration application, it must give a decision notice to the person and to the firm concerned.

(5) The GFSC 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 Act, these Regulations, other regulations made under the Act or MIFIR.

(6) If the GFSC–

(a) proposes to revoke a tied agent's registration, it must give a warning notice to the tied agent and the 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 firm for which the tied agent acts.

**Supervision of tied agents.**

28. The GFSC may supervise compliance by tied agents with provisions contained in or made under the Act–

(a) directly; or

(b) as part of the supervision of the firm for which the tied agent acts.

*Record-keeping*

**Telephone and other records.**

29.(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 GFSC–

(a) to discharge its functions under the Act, these Regulations, MiFIR and EUMAR; 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 carrying on the regulated activity of dealing on own account; and

(ii) the provision of client order services that relate to the carrying on of a regulated activity specified in paragraph 48 or 49 of Schedule 2 to the Act; 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 do 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 sub-regulation (5) may be made once, before the provision of investment services to any new or existing client.

(7) An investment firm must not carry on investment services or 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 or 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 regulation must be–

(a) provided to the client concerned on request;

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

(10) Without affecting the powers of its home state regulator, where an EEA firm which is an investment firm has a branch in Gibraltar, the GFSC may enforce the obligations in this regulation in respect of transactions undertaken by that branch.

*Safeguarding of client financial instruments and funds*

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

30.(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 regulation 31 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 regulation 32 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 sub-regulation (1) to safeguard clients' rights in a manner which satisfies the requirements of regulation 52(15), the investment firm must put in place arrangements which ensure that clients' assets are safeguarded in a manner which meets the objectives of sub-regulation (1).

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

(a) comply with such further requirements (if any) having equivalent effect in terms of safeguarding clients' rights as may be prescribed by general regulations under section 620 of the Act; and

(b) inform clients that they do not benefit from the protection provided under sub-regulation (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) Sub-regulation (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 sub-

regulation 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 GFSC 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 sub-regulation (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 regulation 32 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 regulation 31, 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.**

31.(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 sub-regulation (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 deposit them with a third party in that third country.

(5) The requirements of sub-regulations (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.**

32.(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) Sub-regulation (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 sub-regulation (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 firm 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 in regulations 30 to 34; 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 sub-regulation (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 on the exception in sub-regulation (7) must–

(a) notify the GFSC of the firm's initial proportionality assessment under that sub-regulation; and

(b) periodically review that assessment and notify the GFSC of the outcome of the review.

**Use of client financial instruments.**

33.(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 sub-regulation (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 sub-regulation (2), the conditions in either or both of sub-regulation (4)(a) or (b) and in sub-regulation (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 sub-regulation (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 regulation 52(16).

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

34.(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.

*Algorithmic trading*

**Algorithmic trading.**

35.(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 EUMAR 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 regulation.

(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 GFSC; 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 GFSC; and

(ii) the competent authority in its home State.

(3) The GFSC may require an investment firm to provide it, either on a regular basis or at the GFSC'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 sub-regulation (1) are satisfied; and

(d) details of the testing of its systems.

(4) The GFSC 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 GFSC 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 sub-regulation (3) that the GFSC has received from the investment firm.

(6) An investment firm must arrange for records to be kept in relation to the matters in sub-regulations (2) to (5) and ensure that those records are sufficient to enable the GFSC to monitor the firm's compliance with the requirements of the Act, these Regulations and any other regulations made under the 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 GFSC on 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 regulation and regulation 46 (systems resilience, circuit breakers and electronic trading), 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 EUMAR or the rules of the trading venue.

(11) The provision of direct electronic access to a trading venue without the controls specified in sub-regulation (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 the Act, of these Regulations and of 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 the Act and these Regulations.

(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 GFSC, where it is the home State competent authority of an investment firm–

(a) may require the investment firm to provide the GFSC, on a regular basis or at its request, with–

(i) a description of the systems and controls referred to in sub-regulation (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 GFSC 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 sub-regulations (10) to (15) and ensure that those records are sufficient to enable the GFSC to monitor the firm's compliance with the requirements of, or made under, the 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 regulation applies subject to any regulatory technical standards adopted by the European Commission under Article 17.7 of the MiFID 2 Directive.

*Investor protection: general principles*

**General principles and information to clients.**

36.(1) An investment firm, when providing investment services 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 regulation and in regulation 40.

(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 regulation 52); 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 sub-regulation (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 sub-regulations (2) and (3);

(c) in relation to costs and related charges, information relating to both investment services 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 sub-regulations (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 sub-regulations (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 the MiFID 2 Directive.

(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) Sub-regulations (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 regulation 56 (conflicts of interest) and sub-regulation (1) if in connection with the provision of an investment service 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) Sub-regulation (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) Sub-regulation (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 sub-regulation (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 sub-regulations (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 the MiFID 2 Directive.

(20) In respect of the matters in this regulation with which investment firms must comply, no additional requirements may be imposed by regulations under the Act which affect investment firms' rights under Part 7.

(21) This regulation applies subject to any delegated acts adopted by the European I under Article 24.13 of the MiFID 2 Directive.

*Inducements*

**Inducements.**

37.(1) An investment firm must ensure that the requirements of this regulation and regulation 36(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 sub-regulations (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 service 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 sub-regulation (6) must be made in accordance with regulation 36(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 sub-regulation (6) by–

(a) before providing an investment service 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 service 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 regulation, investment firms must take account of the requirements relating to costs and associated charges in regulation 36(6)(c) and in Article 50 of Commission Delegated Regulation (EU) 2017/565.

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

38.(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 sub-regulation (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.**

39.(1) Research which is provided by a third party to an investment firm that provides portfolio management or other investment services 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 sub-regulation (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, on request, must provide its clients or the GFSC 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 sub-regulation (2).

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

(a) must be managed solely by the firm, based on 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 sub-regulation (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 sub-regulation (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.**

40.(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 regulation and regulation 36.

(2) The GFSC–

(a) may require an investment firm to provide it with any information that the GFSC considers necessary for the purpose of assessing the firm's compliance with sub-regulation (1); and

(b) must publish the criteria to be used for assessing whether an individual referred to in that sub-regulation possesses the necessary knowledge and competence required by that sub-regulation.

(3) An investment firm which is required to provide any information under sub-regulation (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 regulation 36(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 sub-regulations (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 regulation 36(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 on the information received from the client or potential client under sub-regulation (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 sub-regulation (6); or

(ii) the information which the client or potential client has provided under that sub-regulation includes insufficient information regarding their knowledge and experience.

(8) An investment firm may provide investment services that only consist of the execution of client orders or the reception and transmission of client orders with or without ancillary services (other than granting credits or loans under point 2 of paragraph 45(2) of Schedule 2 to the Act 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 sub-regulation (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 schemes, other than structured UCITS as referred to in the second sub-paragraph 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 regulation 56; 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) the client or potential client does not benefit from the corresponding protection of the relevant conduct of business rules.

(9) In sub-regulation (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 the MiFID 2 Directive.

(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 regulation.

(16) This regulation must be applied–

(a) subject to any delegated acts adopted by the European Commission under Article 25.8 of the MiFID 2 Directive; and

(b) having regard to any guidelines issued by ESMA under Article 25.9 to 25.11 of the MiFID 2 Directive.

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

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

(a) the receiving firm may rely on–

(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 the Act or these Regulations, based on any information or recommendation provided by the instructing firm.

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

42.(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 sub-regulation (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 sub-regulation (1) or regulations 36, 52(3) to (9) or 56.

(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 of 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 sub-regulations (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 sub-regulations (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 GFSC, at its request, that the investment firm has complied with this regulation.

(15) This regulation applies subject to any delegated acts or regulatory technical standards adopted by the European Commission under Article 27.9 or 27.10 of the MiFID 2 Directive.

**Client order handling rules.**

43.(1) An investment firm with Part 7 permission 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 sub-regulation (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 GFSC 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 regulation applies subject to any delegated acts adopted by the European Commission under Article 28.3 of the MiFID 2 Directive.

*Transactions with eligible counterparties.*

**Transactions executed with eligible counterparties.**

44.(1) An investment firm with Part 7 permission 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) regulation 36 (1) to (4) and (9) to (19);

(b) regulation 40(1) to (10), (15) and (16);

(c) regulation 42; or

(d) regulation 43(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 regulation 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 scheme 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 is a prescribed eligible counterparty.

(4) An entity's classification as an eligible counterparty under this regulation 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 regulations 36, 40, 42 and 43.

(5) 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.

(6) Sub-regulation (3) applies subject to any delegated acts adopted by the European Commission under Article 30.5 of the MiFID 2 Directive.

## Chapter 2
## Regulated markets

**Compliance.**

45. A market operator with Part 7 permission to operate a regulated market–

(a) must ensure that the regulated market it manages complies with the requirements of the Act and these Regulations; and

(b) may exercise the rights that correspond to the regulated market that it manages by virtue of the Act and these Regulations.

**Systems resilience, circuit breakers and electronic trading.**

46.(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 sub-regulation (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 sub-regulation (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 GFSC, in the manner and form it may require, about the content of such binding written agreements; and

(c) provide the GFSC, at its request, with any further information which is necessary to enable the GFSC to satisfy itself of compliance by the regulated market with this sub-regulation and sub-regulation (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 GFSC in a consistent and comparable manner and in the form the GFSC may require.

(9) The GFSC must report any information it receives under sub-regulation (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 sub-regulation (10) 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 the MiFID 2 Directive 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, or made under, the 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

(ii) 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) Regulated markets may adjust their fees for cancelled orders according to the length of time for which the order was maintained and may calibrate the fees to each financial instrument to which they apply.

(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 GFSC at its request.

(17) For the purpose of enabling the GFSC to monitor trading, a regulated market, when required to do so by the GFSC, must–

(a) provide the GFSC with data relating to the regulated market's order book; or

(b) give the GFSC access to the order book.

(18) This regulation must be applied–

(a) subject to any regulatory technical standards adopted by the European Commission under Article 48.12 of the MiFID 2 Directive; and

(b) having regard to any guidelines issued by ESMA under Article 48.13 of the MiFID 2 Directive.

**Tick sizes.**

47.(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 sub-regulation (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 sub-regulation (1)(a), Article 49.3 of the MiFID 2 Directive; and

(b) in the case of sub-regulation (1)(b), Article 49.4 of the MiFID 2 Directive.

**Admission of financial instruments to trading.**

48.(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-

(a) Chapter 3 of Part 19 of the Act; and

(b) the EU Prospectus Regulation.

(7) Where a regulated market admits a transferable security to trading in accordance with sub-regulation (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 sub-regulation (5) in respect of that security if it has been admitted to trading on that market without the issuer's consent.

(8) This regulation applies subject to any regulatory technical standards developed by ESMA and adopted by the European Commission under Article 51.6 of the MiFID 2 Directive.

**Provisions regarding CCP and clearing and settlement arrangements.**

49.(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 GFSC may prohibit an arrangement under sub-regulation (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 regulation 97(3) (access to CCP, clearing and settlement systems and right to designate settlement system).

(3) In order to avoid undue duplication of control, the GFSC 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 regulation applies without affecting Titles III to V of EMIR.

**Trading on a regulated market governed by Gibraltar law.**

50. Without limiting EUMAR, trading conducted under the systems of a regulated market in Gibraltar is governed by the law of Gibraltar.

## PART 4
## CORPORATE GOVERNMENT AND RISK MANAGEMENT

### Chapter 1
### Investment firms

**Management body.**

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

(2) In applying sub-regulation (1) the GFSC must have regard to any guidelines issued by ESMA and the European Banking Authority under Article 9.1 of the MiFID 2 Directive.

(3) 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.

(4) 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 investment 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 and fair treatment of clients as well as avoiding conflicts of interest in the relationships with clients.

(5) 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 investment 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.

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

(7) At least two persons meeting the requirements in sub-regulation (1) must effectively direct the business of an investment firm.

**Organisational requirements: investment firms.**

52.(1) An investment firm must comply with the requirements in this regulation and in regulations 29 and 35.

(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 the Act and these Regulations; 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 regulation 56) 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 sub-regulation (7) and to understand the characteristics and identified target market of each financial instrument.

(9) Sub-regulations (3) to (8) apply without limiting any other requirement under the Act, these Regulations 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 investment 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 GFSC'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) Sub-regulation (13) applies without affecting the GFSC's powers under the Act, these Regulations 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.**

53.(1) An investment firm which manufactures financial instruments must comply with this regulation, 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 regulation, 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 GFSC on 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 regulation.

(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 the Act or the MiFID 2 Directive 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 sub-regulation (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 on 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 on 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) it 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 sub-regulation (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 sub-regulation (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 GFSC or other relevant competent authority.

**Product governance obligations for distributors.**

54.(1) An investment firm, when deciding on the range of financial instruments and services it intends to offer or recommend to clients, must comply with this regulation 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, or imposed under, the Act or these Regulations when offering or recommending financial instruments manufactured by entities that are not subject to these Regulations or the MiFID 2 Directive.

(3) For the purposes of sub-regulation (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 these Regulations or the MiFID 2 Directive 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 these Regulations or the MiFID 2 Directive, 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) Sub-regulation (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 sub-regulation, acceptable publicly available information is information which is clear, reliable and produced to meet regulatory requirements, such as the disclosure requirements of the EU Prospectus Regulation or under the Transparency Directive.

(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 on 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 the Act and these Regulations, 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 sub-regulation (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 regulation.

(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 GFSC on request.

(16) Distributors must provide manufacturers with information on sales and, where appropriate, on reviews carried out under this regulation, 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 regulation; 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.

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

55.(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 sub-regulation (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 sub-regulation or the firm's compliance with any other provision of the Act, these Regulations or other regulations made under the Act.

**Conflicts of interest.**

56.(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 services 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 of the firm's controllers;

(c) between the firm and any client; or

(d) between clients of the firm.

(2) The conflicts to which sub-regulation (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 regulation 52(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 sub-regulation (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 regulation applies subject to any delegated acts adopted by the European Commission under Article 23.4 of the MiFID 2 Directive.

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

57.(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 EUMAR;

(c) deploy the resource necessary to ensure that its monitoring under paragraph (b) is effective; and

(d) inform the GFSC 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 EUMAR.

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

(3) In relation to behaviour of the kind specified in sub-regulation (1)(d)(iv), the GFSC 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 sub-regulation (1)(d)(iv) to–

(i) the GFSC; 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 regulation applies subject to any delegated acts adopted by the European Commission under Article 31.4 of the MiFID 2 Directive.

## Chapter 2
## Regulated markets

**Requirements for management body of market operator.**

58.(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 sub-regulations (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 sub-regulation (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) Sub-regulation (6) does not apply where the management body member represents the government and for purposes of that sub-regulation–

(a) an executive or non-executive directorship held within the same group or undertakings where the market operator is a controller 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 GFSC–

(a) may decide to allow a management body member to hold one non- executive directorship beyond the limit specified in sub-regulation (6)(a) or (b); and

(b) must inform ESMA of any decisions granted under paragraph (a).

(9) A market operator must devote adequate resources to the induction and training of management body members.

(10) A market operator that 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 sub-regulation (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 sub-regulation (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) A market operator must–

(a) notify the GFSC of the identity of its management body members and of any changes of membership; and

(b) provide the GFSC with any information it may require to assess whether the market operator complies with sub-regulations (1) to (14).

(18) This regulation must be applied having regard to any guidelines issued by ESMA under Article 45.9 of the MiFID 2 Directive.

**Requirements relating to persons exercising significant influence over regulated market.**

59.(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 GFSC as being suitable to do so.

(2) The operator of a regulated market must–

(a) provide the GFSC 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 GFSC 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 GFSC 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 GFSC 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 GFSC–

(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: regulated markets.**

60.(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 GFSC;

(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.

(2) A market operator must not execute client orders against proprietary capital or engage in matched principal trading on any regulated market it operates.

**Access to regulated market.**

61.(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 sub-regulation (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 regulations 36, 40, 42 and 43 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 sub-regulation (6) in another EEA State must notify the GFSC of that intention.

(8) Where the GFSC receives a notification under sub-regulation (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 the ESMA Regulation; and

(c) without undue delay provide the host State regulator with the identity of the members or participants of the regulated market established in the host State.

(9) A market operator must provide the GFSC, 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 GFSC needs in order to comply with sub-regulation (8)(c).

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

62.(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 EUMAR.

(2) The market operator of a regulated market must inform the GFSC 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 EUMAR.

(3) Subject to sub-regulation (4), the GFSC must communicate any information it receives under sub-regulation (2) to ESMA and the competent authorities in other EEA States.

(4) In relation to behaviour of the kind specified in sub-regulation (2)(d), the GFSC 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 sub-regulation (2)(d) to–

(i) the GFSC; 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 regulation applies subject to any delegated acts adopted by the European Commission under Article 54.4 of the MiFID 2 Directive.

## Chapter 3
## Specific requirements for trading venues

*MTFs and OTFs*

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

63.(1) An investment firm or market operator operating an MTF or OTF, in addition to meeting the organisational requirements laid down in regulation 52, 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 regulations 46 and 47 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 GFSC under section 422 of the Act.

(7) An investment firm or market operator operating an MTF or OTF must provide the GFSC 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) Sub-regulation (7) applies without limiting regulation 65(1), (5) and (6).

(9) The GFSC must, at ESMA's request, provide it with any information which the GFSC has received under sub-regulation (7).

(10) This regulation applies subject to any implementing technical standards adopted by the European Commission under Article 18.11 of the MiFID 2 Directive.

**Specific operating requirements for MTFs.**

64.(1) An investment firm or market operator operating an MTF, in addition to meeting the requirements of regulations 29, 52 and 63, 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 regulation 63(2)(c) comply with the requirements of regulation 61(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 the grant of Part 7 permission 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) Regulations 36, 40, 42(1) to (5) and (8) to (15) and 43 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 sub-regulation (3) the members of, or participants in, an MTF must comply with regulations 36, 40, 42 and 43 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 operating requirements for OTFs.**

65.(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 sub-regulation (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 EMIR.

(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 regulation 42.

(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 sub-regulation (10) must be in accordance with sub-regulations (1), (2)(b) and (3) to (6).

(12) Sub-regulations (9) and (10) apply without limiting sub-regulations (2)(a) or regulations 42 and 63.

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

(14) The GFSC 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.

(15) The requirements of regulations 36, 40, 42 and 43 apply to transactions concluded on an OTF.

**SME growth markets.**

66.(1) The operator of an MTF may apply to the GFSC, in the form it may require, to have the MTF registered under this regulation as an "SME growth market".

(2) The GFSC may register an MTF as an SME growth market if the GFSC 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 Chapter 3 of Part 19 of the Act and the EU Prospectus Regulation 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 EUMAR;

(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 EUMAR.

(3) The requirements in sub-regulation (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 the Act or regulations made under it 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 sub-regulation.

(4) The GFSC 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 sub-regulation (2).

(5) If the GFSC–

(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 GFSC 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 regulation a "small and medium-sized enterprise" (SME) means a company that had an average market capitalisation of less than €200 million on the basis of end-year quotes for the previous three calendar years.

(9) This regulation applies subject to any delegated acts adopted by the European Commission under Article 33.8 of the MiFID 2 Directive.

*All trading venues*

**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 sub-regulation (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 the MiFID 2 Directive.

**Position limits and position management controls in commodity derivatives.**

68.(1) The GFSC 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 GFSC must be based on the methodology for calculating positions developed by ESMA and adopted under Article 57.3 of the MiFID 2 Directive ("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 GFSC 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 GFSC must notify ESMA of the exact position limits the GFSC intends to set and, where ESMA issues an opinion to the GFSC assessing the compatibility of those position

limits with the objectives in sub-regulation (2) and the ESMA calculation methodology, the GFSC 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 GFSC'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 the MiFID 2 Directive.

(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 GFSC on a regular basis, and the GFSC must provide ESMA with that information and details of the position limits which the GFSC has established.

(15) The GFSC may only in an exceptional case impose position limits which are more restrictive than those established under sub-regulations (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 GFSC imposes more restrictive position limits in accordance with sub-regulation (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 GFSC's website and expire automatically unless they are renewed for one or more periods of up to six months, which the GFSC may do if the grounds for the restriction continue to apply.

(18) Where, under Article 57.13 of the MiFID 2 Directive, ESMA issues an opinion on the imposition of more restrictive position limits by the GFSC and the GFSC imposes limits contrary to that opinion, the GFSC must immediately publish the reasons for that decision in a notice on its website.

(19) Any position limit imposed by the GFSC under this regulation must be imposed in accordance with regulation 101(2)(d).

(20) The GFSC, in respect of infringements of position limits set in accordance with this regulation, may impose sanctions under the Act or these Regulations 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 GFSC 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 regulation applies subject to any regulatory technical standards adopted by the European Commission under Article 57.3 or 57.12 of the MiFID 2 Directive.

**Position reporting by categories of position holders.**

69.(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 sub-regulation (6);

(b) provide the GFSC and ESMA with a copy of each report published under paragraph (a); and

(c) provide the GFSC 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) Sub-regulations (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 the MiFID 2 Directive.

(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 the REMIT Regulation.

(4) In sub-regulation (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 regulation 68(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) UCITS schemes within the meaning of Part 18 of the Act; or

(ii) AIFMs;

(c) other financial institutions, including–

(i) insurance undertakings and reinsurance undertakings within the meaning of the Solvency 2 Directive; and

(ii) institutions for occupational retirement provision within the meaning of the IORP 2 Directive;

(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 sub-regulation (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 sub-regulation (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 regulation applies subject to any regulatory technical standards, implementing technical standards or delegated acts adopted by the European Commission under Article 58.5, 58.6 or 58.7 of the MiFID 2 Directive.

**PART 5**

## PRUDENTIAL REQUIREMENTS

*Investment firms*

**Application of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020.**

70.(1) An investment firm within the definition of "investment firm" in Article 4.1(2) of the Capital Requirements Regulation is subject to all provisions of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020 that apply to institutions (within the meaning of those Regulations).

(2) An investment firm within Article 4.1(2)(c) of the Capital Requirements Regulation is subject to the own fund requirements referred to in regulation 175(1) of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020.

*Regulated markets*

**Regulated markets: sufficient financial resources.**

71. A regulated market must have available, at the time of the initial grant of Part 7 permission 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.

## PART 6
## NOTIFICATION AND REPORTING

**Management body.**

72. An investment firm must–

(a) notify the GFSC of all members of the firm's management body and of any changes to its membership; and

(b) provide the GFSC with all the information it requires in order to assess whether the firm complies with regulation 51.

**Duty notify changes.**

73. An investment firm must–

(a) notify the GFSC of any material changes to the threshold conditions in relation to all of the regulated activities to which their Part 7 permission relates; and

(b) without delay, provide the GFSC with any information that the GFSC considers necessary for the purpose of assessing the firm's compliance with the operating conditions provided for in the Act and these Regulations.

**Notification of controllers etc.**

74.(1) An investment firm must inform the GFSC at least once each year of–

(a) names of any controller of the firm; and

(b) the amount of their holding.

(2) An investment firm must inform the GFSC promptly, if the firm becomes aware of–

(a) an acquisition of control within section 114 of the Act;

(b) an increase of control within section 115 of the Act; or

(c) a disposition of control within section 116 of the Act.

(3) In the application of Part 9 of the Act to investment firms, section 122 of the Act is subject to any regulatory technical standards or implementing technical standards adopted by the European Commission under Article 12.8 or 12.9 of the MiFID 2 Directive.

**Reports by external auditors.**

75. An investment firm must ensure that its external auditors report at least annually to the GFSC on the adequacy of the firm's arrangements under regulations 30 to 34, 52(15) and (16) and 55.

**Relations with auditors.**

76.(1) Any person authorised within the meaning of the Audit Directive performing in an investment firm or regulated market 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 GFSC 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 the Act, these Regulations 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 sub-regulation (1) in an undertaking which has close links with the investment firm within which the person is carrying out that task.

(3) The GFSC may by written notice require the auditors of an investment firm or regulated market to provide such information relating to the investment firm or regulated market as may be specified in the notice.

(4) The provision of any information to the GFSC under this regulation is subject to the provisions of Part 12 of the Act.

(5) A person who, in good faith, makes a disclosure to the GFSC under sub-regulation (1) or (2) does not breach any contractual or legal restriction on the disclosure of information or incur a liability of any kind.

**Reporting of contraventions.**

77.(1) The GFSC must establish appropriate arrangements for contraventions and potential contraventions of the Act, regulations made under it or MiFIR to be reported to the GFSC.

(2) Arrangements established under sub-regulation (1) must include–

(a) secure communication channels for the reporting of contraventions;

(b) specific procedures for the receipt and investigation of reported contraventions;

(c) arrangements which accord with the data protection legislation for the protection of the personal data of an individual who reports a contravention and any individual who is allegedly responsible for a contravention; and

(d) access for employees of any institution authorised to provide financial services who report contraventions 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 GFSC before any relevant authority involved in the person's protection against unfair treatment, including certification by the GFSC in any employment dispute of the reporting person's status as a person who has reported a contravention.

(3) An employee of an institution authorised to provide financial services who reports a contravention in accordance with arrangements established under sub-regulation (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 a contravention; and

(b) has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by their employer done on the ground that the employee has reported an infringement.

(4) An employee who has been subjected to a detriment contrary to sub-regulation (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.

## PART 7
## FREEDOM OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES

### Chapter 1
### EEA firms

**Application and interpretation of Chapter 1.**

78.(1) This Chapter applies to–

(a) EEA investment firms; and

(b) EEA credit institutions.

(2) In this Chapter–

"EEA credit institution" means an EEA firm within paragraph 1(a) of Schedule 10 to the Act;

"EEA investment firm" means an EEA firm within paragraph 1(h) of that Schedule.

*Branch etc business*

**EEA firms qualifying for authorisation: branches and tied agents in Gibraltar.**

79.(1) This regulation applies to–

(a) an EEA investment firm which, in exercise of an EEA right deriving from the MiFID 2 Directive–

(i) intends to establish a branch in Gibraltar; or

(ii) intends not to establish a branch but to use a tied agent established in Gibraltar; and

(b) an EEA credit institution which, in exercise of an EEA right deriving from the MiFID 2 Directive, intends to use in Gibraltar a tied agent established in an EEA State outside its home State.

(2) This regulation does not apply in relation to the use of a tied agent by an EEA investment firm within sub-regulation (1)(a)(i) if the EEA investment firm itself already qualifies for authorisation under sub-regulation (3).

(3) Once an EEA investment firm or an EEA credit institution satisfies the establishment conditions in sub-regulation (4) or (5) (as the case may be), it qualifies for authorisation.

(4) The establishment conditions for an EEA investment firm within sub-regulation (1)(a)(i) are that–

(a) the GFSC has received notice from the EEA investment firm's home state regulator ("a home state notice") that the home state regulator has received notice from the EEA investment firm that it intends to establish a branch in Gibraltar;

(b) the home state notice contains the following information which the EEA investment firm has given to its home state regulator–

(i) a programme of operations which includes a description of the investment services or investment activities (as well as ancillary services) to be provided;

(ii) the organisational structure of the branch;

(iii) the address in Gibraltar from which documents may be obtained;

(iv) the names of those responsible for the management of the branch;

(v) an indication of whether the branch of the EEA investment firm intends to use tied agents and, if so, the identity of the tied agents;

(vi) details of the accredited compensation scheme of which the EEA investment firm is a member; and

(c) either the GFSC has notified the EEA investment firm that it may commence business in Gibraltar or the period of two months has expired since the EEA investment firm received notification from its home state regulator that the home state notice has been sent to the GFSC.

(5) The establishment conditions for an EEA investment firm within sub-regulation (1)(a)(ii) or for an EEA credit institution are that–

(a) the GFSC has received notice from the home state regulator of the EEA investment firm or EEA credit institution ("a home state notice") that the home state regulator has received notice from an EEA investment firm or EEA credit institution that–

(i) in the case of an EEA investment firm, it has not established a branch but intends to use a tied agent established in Gibraltar;

(ii) in the case of an EEA credit institution, it intends to use a tied agent established in Gibraltar;

(b) the home state notice contains the following information which the EEA investment firm or EEA credit institution has given to its home state regulator–

(i) a programme of operations which includes a description of the investment services investment activities (as well as ancillary services) to be provided;

(ii) a description of the intended use of the tied agents, their identity and an organisational structure, including reporting lines, indicating how the tied agents fit into the corporate structure of the investment firm or credit institution;

(iii) the address in Gibraltar from which documents may be obtained;

(iv) the names of those responsible for the management of the tied agent; and

(c) either the GFSC has notified the EEA credit institution that it may commence business in Gibraltar or the period of two months has expired since the EEA credit institution received notification from its home state regulator that the home state notice has been sent to the GFSC.

(6) On qualifying for authorisation as a result of sub-regulation (3), an EEA investment firm or an EEA credit institution–

(a) has in respect of each permitted investment service or investment activity which is a regulated activity permission to carry on the regulated activity through its branch or tied agent in Gibraltar; and

(b) may only provide ancillary services which are provided together with that regulated activity.

(7) The permission is to be treated as being on terms equivalent to those appearing from the home state notice under sub-regulation (4) or (5) (as the case may be).

(8) In sub-regulation (6)(a), "permitted activity" means any service or activity identified in the home state notice.

**Changes to information provided under regulation 79.**

80.(1) This regulation applies to an EEA investment firm or an EEA credit institution which intends to change any of the information communicated in accordance with regulation 79(4) or (5).

(2) The permission which the EEA investment firm or EEA credit institution has under regulation 79(6) covers the services or activities provided in Gibraltar as a result of the changes referred to in sub-regulation (1) if–

(a) at least one month before implementing the change, the EEA investment firm or EEA credit institution has given its home state regulator notice of the changes; and

(b) the home state regulator has communicated those changes to the GFSC.

**General responsibilities of GFSC for branches and tied agents.**

81.(1) The GFSC is responsible for ensuring that the services or activities provided in Gibraltar by a branch or tied agent of an EEA investment firm or EEA credit institution comply with the obligations in–

(a) regulations 36;

(b) regulation 40;

(c) regulations 42 and 43; and

(d) articles 14 to 26 of MiFIR.

(2) The GFSC must not impose any additional requirements on EEA investment firms or EEA credit institutions in respect of the matters covered by or under the Act or these Regulations.

**Business of branches and tied agents of EEA firms in Gibraltar.**

82.(1) The GFSC may examine the arrangements of a branch or tied agent in Gibraltar and may request any change which is strictly needed to enable the GFSC to enforce the obligations under the provisions mentioned in regulation 81 and measures adopted in relation to them with respect to the services and activities provided in Gibraltar.

(2) Where an EEA investment firm has established a branch in Gibraltar, the EEA investment firm's home state regulator, in the exercise of its responsibilities and after informing the GFSC, may carry out on-site inspections of that branch.

(3) Any tied agent established in Gibraltar–

(a) if used by an EEA investment firm which has established a branch in Gibraltar, must be assimilated to the branch and is in any event subject to the provisions of the Act or these Regulations relating to branches; and

(b) if used by an EEA investment firm which has not established a branch in Gibraltar or by an EEA credit institution, is subject to the provisions of the Act or these Regulations relating to branches

(4) This regulation and regulations 79 to 81 apply subject to any regulatory technical standards or implementing technical standards adopted by the European Commission under article 35.11 or 35.12 of the MiFID 2 Directive.

**EEA firms qualifying for authorisation: services.**

83.(1) This regulation applies to–

(a) an EEA investment firm which, in exercise of an EEA right deriving from the MiFID 2 Directive, intends to provide investment services or investment activities (as well as ancillary services) in Gibraltar;

(b) an EEA credit institution which, in exercise of an EEA right deriving from the MiFID 2 Directive, intends to provide investment services or investment activities (as well as ancillary services) in Gibraltar using tied agents established in Gibraltar.

(2) Once an EEA investment firm or EEA credit institution satisfies the service conditions in sub-regulation (3) or (4) (as the case may be), it qualifies for authorisation.

(3) The service conditions for an EEA investment firm are that–

(a) the GFSC has received notice from the home state regulator of the EEA investment firm ("a home state notice") to the effect that the regulator has received notice from the EEA investment firm of its intent to provide investment services or activities in Gibraltar; and

(b) the home state notice contains–

(i) a programme of operations stating in particular the investment services or investment activities (as well as ancillary services) which the EEA investment firm intends to provide in Gibraltar; and

(ii) if the EEA investment firm intends to provide those services or activities using tied agents established in the EEA investment firm's home State, a statement of that intention identifying the tied agents and the investment services or investment activities (as well as ancillary services) which the tied agents are to provide.

(4) The service conditions for an EEA credit institution are that–

(a) the GFSC has received notice from the home state regulator of the EEA credit institution ("a home state notice") to the effect that the regulator has received notice from the EEA credit institution of its intent to provide investment services or activities in Gibraltar using tied agents established in the EEA credit institution's home State; and

(b) the home state notice identifies the tied agents and the investment services or investment activities (as well as ancillary services) which the tied agents are to provide.

(5) On qualifying for authorisation as a result of sub-regulation (2), an EEA investment firm or EEA credit institution–

(a) has in respect of each permitted activity which is a regulated activity permission to carry on the regulated activity by providing services in Gibraltar; and

(b) may only provide ancillary services which are provided together with that regulated activity.

(6) The permission is to be treated as being on terms equivalent to those appearing from the home state notice under sub-regulation (3) or (4) (as the case may be).

(7) In sub-regulation (5)(a), "permitted activity" means any service or activity identified in the home state notice.

**Changes to information provided under regulation 83.**

84.(1) This regulation applies to an EEA investment firm or an EEA credit institution which intends to change any particulars of the information communicated in accordance with regulation 83(3) or (4).

(2) The permission which an EEA investment firm or EEA credit institution has under regulation 83(5) covers the investment services or investment activities provided in Gibraltar as a result of the changes referred to in sub-regulation (1) if–

(a) at least one month before implementing the change, the EEA investment firm or EEA credit institution has given its home state regulator notice of the changes; and

(b) the home state regulator has communicated those changes to the GFSC.

**Business of EEA firms providing services in Gibraltar.**

85.(1) Where a home state notice under regulation 83 specifies the identity of the tied agents that an EEA investment firm or EEA credit institution intends to use in Gibraltar, the GFSC must publish that information.

(2) The GFSC must not impose any additional requirements on EEA investment firms or EEA credit institutions in respect of the matters covered by or under the Act or these Regulations.

(3) This regulation and regulations 83 and 84 apply subject to any regulatory technical standards or implementing technical standards adopted by the European Commission under article 34.8 or 34.9 of the MiFID 2 Directive.

## Chapter 2
## Gibraltar firms

**Application and interpretation of Chapter 2.**

86.(1) This Chapter applies to–

(a) Gibraltar investment firms; and

(b) Gibraltar credit institutions.

(2) In this Chapter–

"Gibraltar credit institution" means a Gibraltar firm which is a credit institution;

"Gibraltar investment firm" means a Gibraltar firm which is an investment firm;

"host state regulator", in relation to an EEA State, means the competent authority designated in the EEA State under article 67 of the MiFID 2 Directive.

**Extent of Gibraltar firm's services and activities in an EEA State.**

87. If the requirements of regulations 88 or 91 are met, a Gibraltar investment firm or a Gibraltar credit institution–

(a) may provide investment services or investment activities in another EEA State if those investment services or investment activities are covered by the firm's Part 7 permission; but

(b) may only provide ancillary services which are provided together with an investment service or investment activity.

*Branch etc business*

**Gibraltar firms: branches and tied agents in an EEA State.**

88.(1) This regulation applies to–

(a) a Gibraltar investment firm which, in exercise of an EEA right deriving from the MiFID 2 Directive–

(i) intends to establish a branch in another EEA State; or

(ii) intends not to establish a branch but to use a tied agent established in another member State; and

(b) a Gibraltar credit institution which, in exercise of an EEA right deriving from the MiFID 2 Directive, intends to use in another EEA State a tied agent established in that State.

(2) A Gibraltar investment firm within sub-regulation (1)(a)(i) which proposes to exercise its EEA right must notify the GFSC and provide it with the following information–

(a) whether the Gibraltar investment firm plans to establish a branch in the EEA State or use tied agents established there;

(b) a programme of operations which includes the investment services and investment activities (as well as ancillary services) to be provided;

(c) where a branch is 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 Gibraltar investment firm has not established a branch, a description of the intended use of the tied agents, their identity and an organisational structure, including reporting lines, indicating how the tied agents fit into the corporate structure of the Gibraltar investment firm;

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

(f) the names of those responsible for the management of the branch or the tied agents.

(3) A Gibraltar investment firm within sub-regulation (1)(a)(ii) or a Gibraltar credit institution which proposes to exercise its EEA right must notify the GFSC and provide it with the following information–

(a) a programme of operations which includes the investment services and investment activities (as well as ancillary services) to be provided;

(b) a description of the intended use of the tied agents, their identity and an organisational structure, including reporting lines, indicating how the tied agents fit into the corporate structure of the Gibraltar credit institution;

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

(d) the names of those responsible for the management the tied agents.

(4) Within three months of receiving information from a Gibraltar investment firm under sub-regulation (2) or a Gibraltar credit institution under (3), the GFSC must–

(a) send it to the host state regulator, together with details of the accredited compensation scheme of which the investment firm or credit institution is a member in accordance with the Investor Compensation Scheme Directive; and

(b) inform the investment firm or credit institution that it has done so.

(5) Sub-regulation (4) does not apply in relation to a Gibraltar investment firm or Gibraltar credit institution if, taking into account the services and activities that the firm intends to provide, the GFSC has reason to doubt the adequacy of the administrative structure or financial situation of the firm.

(6) If the GFSC refuses to communicate the information which it has received from a Gibraltar firm under sub-regulation (2) or (3) to the host state regulator, the GFSC must give reasons for that decision to the Gibraltar firm within three months of receiving the information: and that refusal or a failure to reply is subject to a right to apply to the Supreme Court.

**Changes to information provided under regulation 88.**

89. If a Gibraltar investment firm or Gibraltar credit institution proposes to change any of the information communicated in accordance with regulation 88(2) or (3), it must give written notice of that change to the GFSC at least one month before implementing the change and the GFSC must inform the host state regulator of that change.

**Business of branches and tied agents of Gibraltar firms in an EEA State.**

90.(1) A branch or tied agent of a Gibraltar investment firm or Gibraltar credit institution may commence business in an EEA State–

(a) once the host state regulator notifies the investment firm or credit institution that it may do so; or

(b) if the host state regulator fails to do so, two months after the GFSC sends that regulator the information required under regulation 88(4).

(2) Where a Gibraltar investment firm has established a branch in another EEA State the GFSC, in the exercise of its responsibilities and after informing the host state regulator, may carry out on-site inspections of that branch.

(3) Any tied agent established in an EEA State–

(a) if used by a Gibraltar investment firm which has established a branch in that EEA State, must be assimilated to the branch and is in any event subject to the provisions of the MiFID 2 Directive relating to branches; and

(b) if used by a Gibraltar investment firm which has not established a branch or by a Gibraltar credit institution, is subject to the provisions of the MiFID 2 Directive relating to branches.

(4) This regulation and regulations 88 and 89 apply subject to any regulatory technical standards or implementing technical standards adopted by the European Commission under Article 35.11 or 35.12 of the MiFID 2 Directive.

*Services business*

**Gibraltar firms: services in an EEA State.**

91.(1) This regulation applies to a Gibraltar investment firm or Gibraltar credit institution which intends to provide investment services or investment activities in an EEA State for the first time.

(2) The Gibraltar investment firm or Gibraltar credit institution must–

(a) inform the GFSC of its intention; and

(b) provide the GFSC with the firm's proposed programme of operations stating, in particular, the investment services or investment activities (as well as ancillary services) that the investment firm or credit institution intends to carry on, whether it intends to do so using tied agents established in Gibraltar and, if so, the identity of those tied agents.

(3) Where the GFSC receives information under sub-regulation (2) in respect of a Gibraltar investment firm or Gibraltar credit institution, the GFSC must, within one month of receiving it, provide that information to the host state regulator.

**Changes to information provided under regulation 91.**

92.(1) This regulation applies to Gibraltar investment firm or a Gibraltar credit institution which intends to change any particulars of the information communicated in accordance with regulation 91(2).

(2) If a Gibraltar firm proposes to change any of the information communicated in accordance with regulation 91(2), it must give written notice of that change to the GFSC at least one month before implementing the change.

**Business of Gibraltar firms providing services in an EEA State.**

93.(1) A Gibraltar investment firm or Gibraltar credit institution may provide investment services and investment activities in the host State once the host state regulator has received from the GFSC the information required under regulation 91 in respect of the firm.

(2) This regulation and regulations 91 and 92 apply subject to any regulatory technical standards or implementing technical standards adopted by the European Commission under article 34.8 or 34.9 of the MiFID 2 Directive.

## Chapter 3
## Access to trading venues and settlement systems

*Access to trading facilities in an EEA State*

**Facilitating access to MTFs or OTFs operated from an EEA State.**

94.(1) This regulation applies to an investment firm or a market operator which is–

(a) operating an MTF or OTF from an EEA State; and

(b) seeking to facilitate access to and trading on the MTF or OTF by remote users, members or participants established in Gibraltar.

(2) Once an investment firm or market operator to which this regulation applies informs its home state regulator that it intends to provide arrangements to facilitate access and trading of the kind mentioned in paragraph (1)(b) in Gibraltar, it may provide those arrangements.

(3) The GFSC must not impose any additional requirements on EEA firms or market operators in respect of the matters covered by or under the Act.

(4) This regulation applies subject to any regulatory technical standards or implementing technical standards adopted by the European Commission under article 34.8 or 34.9 of the MiFID 2 Directive.

*Access to trading facilities in Gibraltar*

**Access to regulated markets in Gibraltar.**

95.(1) An EEA investment 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 or under the Act may be imposed on an EEA firm exercising a right conferred by paragraph (1).

**Facilitating access to MTFs or OTFs operated from Gibraltar.**

96.(1) A Gibraltar firm which is an investment firm or market operator and is operating an MTF or OTF from Gibraltar may provide appropriate arrangements in an 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 GFSC if it intends to provide arrangements of that kind.

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

(3) This regulation applies subject to any regulatory technical standards or implementing technical standards adopted by the European Commission under Article 34.8 or 34.9 of the MiFID 2 Directive.

**Access to CCP, clearing and settlement systems and right to designate settlement system.**

97.(1) An EEA investment 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) Direct and indirect access by an EEA investment firm to those facilities–

(a) must be subject to the same non-discriminatory, transparent and objective criteria that apply to local members or participants; and

(b) must 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 GFSC'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 GFSC under sub-regulation (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 sub-regulation the GFSC must take account of any oversight or supervision already exercised by another authority.

(5) This regulation applies without affecting Titles III to V of EMIR.

**CCP, clearing and settlement arrangements for MTFs in Gibraltar.**

98.(1) A Gibraltar firm operating an MTF in Gibraltar may enter into appropriate arrangements with a CCP or clearing house and a settlement system of an 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 GFSC may prohibit the use of a CCP, clearing house or settlement system in an EEA State by a Gibraltar firm 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 regulation 97(3).

## Chapter 4
## Third country firms

**Requirements applying to third-country firms.**

99.(1) Where a third-country firm intends to provide any investment service or investment activity in Gibraltar that is a regulated activity (with or without any ancillary services)–

(a) the firm must have Part 7 permission to carry on that activity;

(b) the firm must establish a branch in Gibraltar;

(c) the third country where the firm is established must have 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; and

(d) the GFSC must be satisfied that the branch will satisfy the requirements of sub-regulation (3).

(2) An application by a third-country firm for Part 7 permission must include–

(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) a programme of operations setting out the investment services or investment activities and ancillary services to be provided by the branch, its organisational structure and a description of any outsourcing to third parties of essential operating functions;

(c) the names of the persons responsible for the management of the branch and the relevant documents to demonstrate compliance with regulation 51(1); and

(d) information about the initial capital at free disposal of the branch.

(3) A branch of a third-country firm is subject to the supervision of the GFSC and must comply with the requirements of–

(a) regulations 35, 36, 40, 42, 43(1), 52, 56, and 63 to 75;

(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 third-country firm's Part 7 permission.

(4) The GFSC 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 the MiFID 2 Directive; or

(b) treat branches of third-country firms more favourably than EEA firms.

**Services provided at the client's exclusive initiative.**

100.(1) The requirement under regulation 99(1)(b) to establish a branch does not apply to a third-country firm providing an investment service or investment activity which is initiated at the client's exclusive initiative by a retail client or professional client (within the meaning of Section 2 of the Schedule to these Regulations) established or situated in Gibraltar.

(2) Sub-regulation (1) extends to the relationship between a third-country firm and a client specifically relating to the provision of the investment service or investment 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.

## PART 8
## REGULATORY POWERS

*Intervention*

**Additional powers.**

101.(1) For the purpose of discharging its functions under the Act, these Regulations, MiFIR and the MiFID 2 Directive, the GFSC may act directly or in collaboration with other competent or statutory authorities or institute legal proceedings.

(2) In addition to any other powers the GFSC has under the Act, these Regulations or MiFIR, the GFSC may in discharging its functions–

(a) require–

(i) existing recordings of telephone conversations, electronic communications or data traffic records held by an investment firm or any other entity regulated under the Act, MiFIR or these Regulations;

(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;

(b) 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;

(c) request any person to take steps to reduce the size of a position or exposure;

(d) 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 regulation 68;

(e) 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 regulation 52(3) to (9).

*Sanctions*

**Sanctioning powers.**

102.(1) For the purposes of section 150 of the Act, the sanctioning powers set out in Part 11 of the Act which are exercisable in relation to a contravention of a regulatory requirement (within the meaning of that Part) are to be read together with the following provisions of this Part.

(2) Sections 158 to 162 of the Act apply to any sanctioning action taken against an investment firm by the GFSC in exercise of the following powers.

**Additional persons subject to powers.**

103.(1) In addition to the persons specified in section 147 and 148 of the Act the GFSC may exercise the sanctioning powers set out in Part 11 of the Act and in this Part–

(a) for the purposes of regulation 18(6)(a), against the directors and other persons responsible for the management of an investment firm which is applying for Part 7 permission to carry on investment services or activities;

(b) for the purposes of regulation 74(2), against the directors and other persons responsible for the management of an investment firm;

(c) against a member of the management body of an authorised person;

(d) against an employee of an authorised person;

(e) against a member of the management body of a market operator;

(f) against an employee of a market operator.

(2) The GFSC may also exercise the power set out in section 152 of the Act to impose an administrative penalty on a person who carries on investment services or activities in contravention of the general prohibition.

**Additional power: management prohibition order.**

104. The power of the GFSC to issue a prohibition order against a regulated individual in accordance with section 156 of the Act includes the power to–

(a) issue an order which prohibits the regulated individual from exercising management functions in any regulated firm which is an investment firm or market operator; or

(b) issue an order which-

(i) applies to any individual who, at the time of the contravention of a regulatory requirement by the individual, was exercising a management function in that firm or market operator; and

(ii) prohibits the individual from exercising management functions in any regulated firm which is an investment firm or market operator; or

(c) issue an order which-

(i) applies to any individual who, at the time of the contravention of a regulatory requirement by an investment firm or market operator, was exercising a management function in that firm or market operator and was knowingly concerned in the contravention; and

(ii) prohibits the individual from exercising management functions in any regulated firm which is an investment firm or market operator.

**Additional power: market participation suspension order.**

105.(1) The GFSC may issue an order suspending an investment firm which is a regulated firm and which contravenes a regulatory requirement from being–

(a) a member of or participant in a regulated market or an MTF; or

(b) a client of an OTF.

(2) The order must specify a period during which it has effect.

**Maximum amounts of administrative penalty.**

106.(1) Any administrative penalty imposed under section 152 of the Act for a contravention of a regulatory requirement by a person to whom these Regulations apply must be of an amount which does not exceed the higher of the following–

(a) where the amount of the benefit derived as a result of the contravention can be determined, two times the amount of that benefit;

(b) in the case of a legal person–

(i) €5,000,000; or

(ii) 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, €5,000,000.

(2) For the purposes of sub-regulation (1), a person who is not an authorised person or a regulated individual but who is nonetheless a person who may be subject to an administrative penalty under Part 11 of the Act as modified by these Regulations is a person to whom these Regulations apply.

(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 the Accounting Directive, the relevant total turnover for the purpose of sub-regulation (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.

**Publication of sanctioning action.**

107.(1) This regulation applies–

(a) where the GFSC has taken any sanctioning action under the Act or these Regulations in respect of a contravention of a regulatory requirement (other than measures of an investigatory nature); and

(b) instead of sections 616 to 618 of the Act.

(2) The GFSC must publish on its website only details of any sanctioning action taken in respect of a person without undue delay after that person is informed of that action.

(3) The information published must be limited to–

(a) the identity of the person against whom the action has been taken;

(b) the type and nature of the contravention; and

(c) the details of the sanctioning action taken.

(4) The GFSC must take one of the steps in sub-regulation (5) where–

(a) following an obligatory prior assessment, it considers that it would be disproportionate to publish in accordance with sub-regulation (2)–

(i) the identity of the legal person involved; or

(ii) the personal data of the individual involved; or

(b) it considers that publication 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 regulation applies is subject to an appeal, the GFSC 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 GFSC must ensure that any publication in accordance with this regulation 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 legislation.

(9) The GFSC must–

(a) inform ESMA of any sanctioning action taken but not published in accordance with sub-regulation (5)(c), including any related appeal and its outcome;

(b) if it has disclosed a sanctioning action 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 sanctioning actions and measures taken in accordance with sub-regulations (1) to (7).

(10) This regulation applies subject to any implementing technical standards adopted by the European Commission under Article 71(7) of the MiFID 2 Directive.

*GFSC acting as host State competent authority*

**Powers as host State competent authority.**

108.(1) The GFSC, in its capacity as host State competent authority, may require all EEA investment firms or EEA credit institutions with branches in Gibraltar to report to the GFSC periodically on the activities of those branches for statistical purposes.

(2) The GFSC may require branches of EEA investment firms or EEA credit institutions to provide the GFSC with the information necessary for monitoring the compliance of those branches with the standards that apply to them under regulation 81(1).

(3) Any requirement imposed under this regulation by the GFSC 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 competent authority.**

109.(1) Where the GFSC has clear and demonstrable grounds for believing that an EEA investment firm or EEA credit institution which has a branch or is providing services in Gibraltar is infringing provisions of the Act or regulations made under it which do not confer powers on the GFSC as the host State competent authority, the GFSC 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 EEA investment firm or EEA credit institution persists in acting in a manner that is clearly prejudicial to the interests of investors in Gibraltar or the orderly functioning of markets, the GFSC 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 EEA investment firm or EEA credit institution 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 the ESMA Regulation.

(3) Where the GFSC ascertains that an EEA investment firm or EEA credit institution that has a branch in Gibraltar is infringing provisions of the Act or regulations made under it which confer powers on the GFSC as the host State competent authority, the GFSC must require the EEA investment firm or EEA credit institution concerned to put an end to its irregular situation.

(4) If the EEA investment firm or EEA credit institution concerned fails to take the necessary steps, the GFSC must–

(a) take appropriate measures to ensure that the EEA investment firm or EEA credit institution 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 GFSC, the EEA investment firm or EEA credit institution persists in infringing the relevant provisions of the Act or regulations made under it, the GFSC–

(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 the ESMA Regulation.

(6) Where the GFSC, 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 the Act or regulations made under it, the GFSC 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 GFSC–

(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 the ESMA Regulation.

(8) Any sanction or restriction imposed by the GFSC under this regulation on the activities of an EEA investment firm, EEA credit institution, regulated market, MTF or OTF must be properly justified and communicated to the EEA investment firm or EEA credit institution or regulated market concerned.

(9) If the GFSC–

(a) proposes to impose any sanction or restriction under this regulation, it must give the EEA investment firm, EEA credit institution, regulated market, MTF or OTF concerned a warning notice; and

(b) decides to impose any sanction or restriction under this regulation, it must give the EEA investment firm, EEA credit institution, regulated market, MTF or OTF concerned a decision notice.

## PART 9
## MISCELLANEOUS

**The Register: investment services and investment activities.**

110.(1) This regulation makes provision as to the contents of the GFSC Register in connection with investment services or investment activities.

(2) The Register must contain such information as the GFSC considers appropriate and must include at least the following (in separate lists)–

(a) investment firms which are regulated firms;

(b) local firms which are identified as such in accordance with regulation 8(3)(d) and which are regulated firms;

(c) tied agents other than those established in an EEA State;

(d) regulated markets for which Gibraltar is the home State;

(e) MTF's registered as SME growth markets under regulation 66.

(3) The Register must identify the investment services and investment activities to which a regulated firm's Part 7 permission relates.

(4) The GFSC Register must include details of-

(a) any variation or cancellation of a regulated firm's Part 7 permission;

(b) any variation or cancellation of a local firm's Part 7 permission;

(c) any case where a tied agent no longer qualifies as exempt as under regulation 9(3);

(d) any withdrawal of an MTF's registration as an SME growth market under regulation 66.

(5) If it appears to the GFSC that a person in respect of whom there is an entry in the GFSC Register as a result of any provision of sub-regulation (2) has ceased to be a person in respect to whom that provision applies, the GFSC may remove the entry from the Register.

(6) The GFSC must ensure that the Register is made available online for consultation by the public.

**Application of MiFIR.**

111.(1) MiFIR has effect in Gibraltar in relation to investment firms, regulated markets and market operators.

(2) The application of MiFIR to investment firms is subject to sub-regulations (3) to (7)

(3) In accordance with Articles 15.1 and 18.4 of MiFIR, an investment firm must notify the GFSC in writing if the firm falls within the definition of a systematic internaliser.

(4) The GFSC must transmit to ESMA any notification which the GFSC receives under sub-regulation (2).

(5) Third-country firms are not permitted to carry on investment services or investment activities together with ancillary services in or from Gibraltar under the fifth paragraph of Article 46.4 of MiFIR.

(6) 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 the Schedule) established or situated in Gibraltar.

(7) Sub-regulation (6) extends to the relationship between a third-country firm and a client specifically relating to the provision of the investment service or investment activity in question, but does not entitle a third-country firm to market new categories of investment services or products to that client.

**Codes of practice.**

112.(1) The GFSC, with the consent of the Minister, may issue one or more codes of practice containing the criteria to which the GFSC refers in exercising its functions under the Act or these Regulations, including, in particular, its powers to give, vary or cancel Part 7 permission.

(2) Any code issued under this regulation 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.

**Civil proceedings for loss.**

113.(1) A breach of the Act, these Regulations or MiFIR by a person to whom these Regulations apply 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 regulation, a certificate issued by or on behalf of the GFSC certifying that it has taken a sanctioning action on a person under the Act, these Regulations or MiFIR is admissible as conclusive evidence of the matters certified.

*Monitoring compliance and notifying ESMA*

**GFSC duties to monitor compliance by investment firms.**

114.(1) The GFSC must–

(a) establish appropriate arrangements to monitor the compliance by investment firms with their obligations to continue to satisfy the threshold conditions; and

(b) monitor the activities of investment firms in order to assess compliance with the operating conditions provided for in the Act and these Regulations.

(2) In establishing monitoring arrangements under sub-regulation (1)(a) the GFSC must have regard to any guidelines issued by ESMA under Article 21.2 of the MiFID 2 Directive.

**GFSC duties to monitor compliance by regulated markets.**

115. The GFSC must–

(a) establish appropriate arrangements to monitor the compliance by regulated markets with their obligations to continue to satisfy the threshold conditions; and

(b) monitor compliance by regulated markets with the requirements of the Act and regulations made under it.

**Notifying ESMA: permissions and regulated markets.**

116.(1) The GFSC must notify ESMA of-

(a) the giving by it of Part 7 permission to an investment firm;

(b) the cancellation by it of permission within paragraph (a) in reliance on any ground specified in paragraph 6 of Schedule 13 to the Act;

(c) every Part 7 permission which the GFSC grants to an investment firm or market operator to operate an MTF or an OTF;

(d) the cancellation by it of Part 7 permission given to a market operator on any ground specified in paragraph 8 of Schedule 13 to the Act.

(2) The GFSC must send a copy of the list of regulated markets referred to in regulation 110(2)(d) and any amendments to it to ESMA and the other EEA States.

(3) The GFSC must notify ESMA of the complaint and redress procedures available under Part 16 of the Act.

(4) The requirements in this regulation are in addition to the GFSC's obligations to communicate specified information to ESMA in accordance with–

(a) regulation 16(2);

(b) regulation 46(9);

(c) regulation 57(2) and (3);

(d) regulation 58(8);

(e) regulation 61(8);

(f) regulation 62(3) and (4);

(g) regulation 63(9);

(h) regulation 66(6);

(i) regulation 68(7), (14) and (16);

(j) regulation 107;

(k) regulation 109(2), (5) and (7);

(l) regulation 111(4);

(m) regulation 117(b);

(n) regulation 118(5), (6) and (7);

(o) regulation 121(2).

*Cooperation*

**Cooperation and exchange of information with ESMA.**

117. The GFSC must–

(a) cooperate with ESMA for the purposes of the MiFID 2 Directive, in accordance with the ESMA Regulation; and

(b) without undue delay provide ESMA with any information necessary to carry out its duties under the MiFID 2 Directive or MiFIR, in accordance with Articles 35 and 36 of the ESMA Regulation.

**Obligation to cooperate.**

118.(1) The GFSC 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 the Act, regulations made under it, the MiFID 2 Directive and MiFIR.

(2) The GFSC–

(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 GFSC 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 GFSC 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 GFSC has good reasons to suspect that acts contrary to the provisions of the MiFID 2 Directive or MiFIR are being or have been carried out by entities not subject to its supervision on the territory of another EEA State, the GFSC must notify the competent authority of that EEA State and ESMA in as specific a manner as possible.

(6) Where the GFSC as home State competent authority receives a notification of a similar kind to one under sub-regulation (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 sub-regulations (1), (2) or (5), the GFSC 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 regulation 101(2)(c); or

(b) any limitation on the ability of a person to enter into a commodity derivative imposed under regulation 101(2)(d).

(8) A notification under sub-regulation (7) must include (where relevant)–

(a) the details of any request or demand for information made under regulation 101(2)(b), 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 regulation 101(2)(d), 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 regulation 68 and the reasons for the exemption.

(9) Other than in exceptional circumstances where it is not possible to do so, a notification under sub-regulation (7) must be made at least 24 hours before the actions or measures are intended to take effect.

(10) Where the GFSC receives a notification from another competent authority of a kind similar to one under sub-regulation (7)–

(a) it may take measures under regulation 101(2)(c) or (d) 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 regulation.

(11) Where any action under sub-regulation (7)(a) or (b) relates to wholesale energy products (within the meaning of the REMIT Regulation), the GFSC must also notify the

Agency for the Cooperation of Energy Regulators (ACER) established under Regulation (EC) No 713/2009.

(12) The GFSC must–

(a) in relation to 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) in relation to 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 regulation applies subject to any implementing technical standards adopted by the European Commission under Article 79(9) of the MiFID 2 Directive.

**Cooperation between competent authorities.**

119.(1) The GFSC 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 GFSC is the home State competent authority, the GFSC may contact the investment firm directly but, in that event, the GFSC must inform the investment firm's home State competent authority that it has done so.

(3) Where the GFSC 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 regulation applies subject to any regulatory technical standards or implementing technical standards adopted by the European Commission under Article 80(3) or (4) of the MiFID 2 Directive.

**Refusal to cooperate.**

120.(1). The GFSC 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 regulation 11 (consultation before giving permission to an investment firm) or to exchange information as provided for in regulation 124 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 GFSC must notify the requesting competent authority and ESMA, providing as much information as possible.

**Binding mediation.**

121. The GFSC 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 the MiFID 2 Directive; or

(b) to exchange information as provided for in Article 81 of the MiFID 2 Directive.

**Cooperation agreements with third countries.**

122.(1) The Government of Gibraltar 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 regulatory 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 sub-regulation (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 sub-regulation in Gibraltar and the third country concerned; and

(b) the information exchanged is subject to guarantees of professional secrecy at least equivalent to those referred to in regulation 123.

(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 GFSC may not disclose information under this regulation 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.

(5) Nothing in this regulation affects the power of the GFSC to conclude cooperation agreements with domestic authorities and foreign regulators under section 47 of the Act.

*Confidentiality and exchange of information*

**Professional secrecy.**

123.(1) Information received by a person who is subject to the professional secrecy obligation imposed by section 46(1) and (2) of the Act in the course of any functions or duties under the Act or these Regulations may not be disclosed by them 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 the Act, these Regulations or MiFIR.

(2) 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.

(3) Without affecting any criminal or taxation law, the GFSC or any other person receiving confidential information under the Act, these Regulations or MiFIR may only use that information–

(a) in the performance of their functions or duties–

(i) in the case of the GFSC, within the scope of the Act, these Regulations 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.

(4) This regulation does not prevent the GFSC from exchanging or transmitting confidential information in accordance with the Act, these Regulations 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 Depositaries or with the consent of the competent authority or person that communicated the information.

(5) This regulation does not prevent the GFSC from exchanging or transmitting confidential information that has not been received from a competent authority of another EEA State.

**Exchange of information.**

124.(1) The GFSC, in its capacity as the designated contact point under section 33 of the Act, must immediately exchange with the competent authorities which under Article 79(1) of the MiFID 2 Directive 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 the Act, these Regulations, the MiFID 2 Directive or MiFIR.

(2) Where the GFSC exchanges information under the Act, these Regulations or MiFIR with another designated contact point, the GFSC may indicate at the time of communication that the information must not be disclosed without the GFSC's express agreement.

(3) The GFSC may transmit information it receives under sub-regulation (1), regulation 76 (relations with auditors) or section 47 of the Act (cooperation agreements) 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 GFSC must immediately inform the designated contact point concerned).

(4) Any person receiving confidential information under sub-regulation (1), regulation 76 (relations with auditors) or section 47 of the Act (cooperation agreements) 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 Part 28 of the Act; or

(f) in referring a consumer complaint to the Financial Services Ombudsman under Part 14 of the Act.

(5) This regulation applies subject to any implementing technical standards adopted by the European Commission under Article 81(4) of the MiFID 2 Directive.

(6) Nothing in this regulation or in Part 5 of the Act (confidentiality and cooperation) prevents the GFSC 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 European Central Bank, in their capacity as monetary authorities; and

(b) where appropriate, to other public authorities responsible for overseeing payment and settlement systems.

## SCHEDULE

Regulation 2(1)

## 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 or activities and financial instruments for the purposes of these Regulations.

(1) Entities which are required to be authorised or regulated to operate in the financial markets. The list below 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 institutions authorised to provide financial services;

(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: €20,000,000;

(b) net turnover: €40,000,000;

(c) own funds: €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 International Monetary Fund, the European Central Bank, the European Investment Bank 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 they 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 €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 Schedule.

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 the client eligible for a professional treatment, the investment firm shall take appropriate action.