

**SECOND SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

No. 3969 of 13 December, 2012

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LEGAL NOTICE NO. 222 OF 2012.

**FINANCIAL SERVICES (COLLECTIVE INVESTMENT SCHEMES)  
ACT 2011**

**FINANCIAL SERVICES (COLLECTIVE INVESTMENT SCHEMES)  
(AMENDMENT) REGULATIONS 2012**

In exercise of the powers conferred on him by section 53 of the Financial Services (Collective Investment Schemes) Act 2011, and in order to transpose into the law of Gibraltar Commission Directive 2007/16/EC of 19 March 2007 implementing Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as replaced by Directive 2009/65/EC, the Minister has made the following Regulations—

**Title and commencement.**

1. These Regulations may be cited as the Financial Services (Collective Investment Schemes) (Amendment) Regulations 2012 and come into operation on the day of publication.

**Amendments to the Financial Services (Collective Investment Schemes) Regulations 2011.**

2. The Financial Services (Collective Investment Schemes) Regulations 2011 (the principal Regulations) are amended in accordance with regulations 3 to 6 below.

**Insertion of regulations 2A to 2B.**

3. The principal Regulations are amended by inserting the following regulations after regulation 2—

**“Meaning of instruments normally dealt in on the money  
market.**

2A.(1) The reference in regulation 2(1) to money market instruments as instruments shall be understood as a reference to the following—

- (a) financial instruments which are admitted to trading or dealt in on a regulated market in accordance with regulation 47(1)(a), (b) and (c); or
- (b) financial instruments which are not admitted to trading.

(2) The reference in regulation 2(1) to money market instruments as instruments normally dealt in on the money market shall be understood as a reference to financial instruments which fulfil one of the following criteria—

- (a) they have a maturity at issuance of up to and including 397 days;
- (b) they have a residual maturity of up to and including 397 days;
- (c) they undergo regular yield adjustments in line with money market conditions at least every 397 days; or
- (d) their risk profile, including credit and interest rate risks, corresponds to that of financial instruments which have a maturity as referred to in paragraphs (a) or (b), or are subject to a yield adjustment as referred to in paragraph (c).

**Liquid instruments with a value which can be accurately determined at any time.**

2B.(1) The reference in regulation 2(1) to money market instruments as instrument which are liquid shall be understood as a reference to financial instruments which can be sold at limited cost in an adequately short time frame, taking into account the obligation of the UCITS to repurchase or redeem its units at the request of any unit holder.

(2) The reference in regulation 2(1) to money market instruments as instrument which have a value which can be accurately

determined at any time shall be understood as a reference to financial instruments for which accurate and reliable valuations systems, which fulfil the following criteria, are available—

- (a) they enable the UCITS to calculate a net asset value in accordance with the value at which the financial instrument held in the portfolio could be exchanged between knowledgeable willing parties in an arm's length transaction; and
  - (b) they are based either on market data or on valuation models including systems based on amortised costs.
- (3) The criteria referred to in subregulations (1) and (2) shall be presumed to be fulfilled in the case of financial instruments which are—
- (a) normally dealt in on the money market for the purposes of regulation 2(1); and
  - (b) admitted to, or dealt in on a regulated market in accordance with regulation 47(1)(a), (b) or (c),

unless there is information available to the UCITS that would lead to a different determination.”.

**Insertion of regulations 47A to 47D.**

4. The principal Regulations are amended by inserting the following regulations after regulation 47—

**“Instruments of which the issue or issuer is regulated for the purpose of protecting investors and savings.**

47A.(1) The reference in regulation 47(1)(h) to money market instruments, other than those dealt in on a regulated market, of which the issue or the issuer is itself regulated for the purpose of protecting investors and savings, shall be understood as a reference to financial instruments which fulfil the following criteria—

- (a) the financial instrument fulfils one of the criteria set out in regulation 2A(2) and all the criteria set out in regulation 2B(1) and (2);
  - (b) appropriate information is available for the instruments, including information which allows an appropriate assessment of the credit risks related to the investment in such instruments, taking into account subregulations (2), (3) and (4); and
  - (c) the instruments are freely transferable.
- (2) Where money market instruments are covered by regulation 47(1)(h)(ii) and (iv), for those which are issued by a local or regional authority of a Member State or by a public international body but not guaranteed by a Member State or, in the case of a federal State which is a Member State, by one of the members making up the federation, appropriate information as referred to in paragraph (b) of subregulation (1) of this regulation shall consist in the following—
- (a) information on both the issue or the issuance programme and the legal and financial situation of the issuer prior to the issue of the money market instrument;
  - (b) updates of the information referred to in paragraph (a) on a regular basis and whenever a significant event occurs;
  - (c) the information referred to in paragraph (a), verified by appropriately qualified third parties not subject to instructions from the issuer;
  - (d) available and reliable statistics on the issue or the issuance programme.
- (3) Where money market instruments are covered by regulation 47(1)(h)(iii), appropriate information as referred to in subregulation (1)(b) shall consist of the following—

- (a) information on the issue or the issuance programme or on the legal and financial situation of the issuer prior to the issue of the money market instrument;
  - (b) updates of the information referred to in paragraph (a) on a regular basis and whenever a significant event occurs;
  - (c) available and reliable statistics on the issue or the issuance programme or other data enabling an appropriate assessment of the credit risks related to the investment in such instruments.
- (4) In the case of all money market instruments covered by regulation 47(1)(h)(i), except those referred to in subregulation (2) and those issued by the European Central Bank or by a central bank from a Member State, appropriate information as referred to in subregulation (1)(b) shall consist of information on the issue or the issuance programme or on the legal and financial situation of the issuer prior to the issue of the money market instrument.

**Money market instruments: prudential rules.**

47B. The reference in regulation 47(1)(h)(iii) to an establishment which is subject to, and complies with, prudential rules considered by the Authority to be at least as stringent as those laid down by European Union law shall be understood as a reference to an issuer which is subject to, and complies with, prudential rules and fulfils one of the following criteria—

- (a) it is located in the European Economic Area;
- (b) it is located in an OECD country belonging to the Group of Ten;
- (c) it has at least investment grade rating;
- (d) it can be demonstrated on the basis of an in-depth analysis of the issuer that the prudential rules applicable to that issuer are at least as stringent as those laid down by European Union law.

**Securitisation vehicles which benefit from a banking liquidity line.**

47C. The reference in regulation 47(1)(h)(iv)–

- (a) to securitisation vehicles shall be understood as a reference to structures, whether in corporate, trust or contractual form, set up for the purpose of securitisation operations; and
- (b) to banking liquidity lines shall be understood as a reference to banking facilities secured by a financial institution which itself complies with regulation 47(1)(h)(iii).

**Financial indices.**

47D.(1) The reference in regulation 47(1)(g) to financial indices shall be understood as a reference to indices which fulfil the following criteria–

- (a) they are sufficiently diversified, in that the following criteria are fulfilled–
  - (i) the index is composed in such a way that price movements or trading activities regarding one component do not unduly influence the performance of the whole index;
  - (ii) where the index is composed of assets referred to in regulation 47(1), its composition is at least diversified in accordance with regulation 50;
  - (iii) where the index is composed of assets other than those referred to in regulation 47(1), it is diversified in a way which is equivalent to that provided for in regulation 50;
- (b) they represent an adequate benchmark for the market to which they refer, in that the following criteria are fulfilled–

- (i) the index measures the performance of a representative group of underlying assets in a relevant and appropriate way;
  - (ii) the index is revised or rebalanced periodically to ensure that it continues to reflect the markets to which it refers following criteria which are publicly available;
  - (iii) the underlying assets are sufficiently liquid, which allows users to replicate the index, if necessary;
- (c) they are published in an appropriate manner, in that the following criteria are fulfilled–
- (i) their publication process relies on sound procedures to collect prices and to calculate and to subsequently publish the index value, including pricing procedures for components where a market price is not available;
  - (ii) material information on matters such as index calculation, rebalancing methodologies, index changes or any operational difficulties in providing timely or accurate information is provided on a wide and timely basis.
- (2) Where the composition of assets which are used as underlyings by financial derivatives in accordance with regulation 47(1) does not fulfil the criteria set out in subregulation (1), those financial derivatives shall, where they comply with the criteria set out in section 2B(1), be regarded as financial derivatives on a combination of the assets referred to in section 2B(1)(a) (i), (ii) and (iii).”.

**Insertion of regulations 48A to 48B.**

5. The principal Regulations are amended by inserting the following regulations after regulation 48–

**“Transferable securities and money market instruments embedding derivatives.**

48A.(1) The reference in regulation 48(4)(d) to transferable securities embedding a derivative shall be understood as a reference to financial instruments which fulfil the criteria set out in section 2A(1) and which contain a component which fulfils the following criteria—

- (a) by virtue of that component some or all of the cash flows that otherwise would be required by the transferable security which functions as host contract can be modified according to a specified interest rate, financial instrument price, foreign exchange rate, index of prices or rates, credit rating or credit index, or other variable, and therefore vary in a way similar to a stand-alone derivative;
- (b) its economic characteristics and risks are not closely related to the economic characteristics and risks of the host contract;
- (c) it has a significant impact on the risk profile and pricing of the transferable security.

(2) Money market instruments which—

- (a) fulfil one of the criteria set out in regulation 2A(2) and all the criteria set out in regulation 2B (1) and (2); and
- (b) contain a component and fulfils the criteria set out in subregulation (1),

shall be regarded as money market instruments embedding a derivative.

(3) A transferable security or a money market instrument shall not be regarded as embedding a derivative where it contains a component which is contractually transferable independently of the transferable security or the money market instrument. Such a component shall be deemed to be a separate financial instrument.



**Techniques and instruments for the purpose of efficient portfolio management.**

48B.(1) The reference in regulation 48(3) to techniques and instruments which relate to transferable securities and which are used for the purpose of efficient portfolio management shall be understood as a reference to techniques and instruments which fulfil the following criteria—

- (a) they are economically appropriate in that they are realised in a cost-effective way;
- (b) they are entered into for one or more of the following specific aims—
  - (i) reduction of risk;
  - (ii) reduction of cost;
  - (iii) generation of additional capital or income for the UCITS with a level of risk which is consistent with the risk profile of the UCITS and the risk diversification rules laid down in regulation 49 of the Financial Services (Collective Investment Schemes) Regulations 2011;
- (c) their risks are adequately captured by the risk management process of the UCITS.

(2) Techniques and instruments complying with the criteria set out in subregulation (1) and relating to money market instruments shall be regarded as techniques and instruments for the purposes of effective portfolio management as referred to in regulation 48(3).”.

**Insertion of regulation 50A.**

6. The principal Regulations are amended by inserting the following regulation after regulation 50—

**“Index-replicating UCITS.**

- 50A.(1) The reference in regulation 50(1) to replicating the composition of a stock or debt securities index shall be understood as a reference to replication of the composition of the underlying assets of the index, including the use of derivatives or other techniques and instruments within the meaning of regulations 48(3) and 48B.
- (2) The reference in regulation 50(1) to an index whose composition is sufficiently diversified shall be understood as a reference to an index which complies with the risk diversification rules of regulation 50.
- (3) The reference in regulation 50(1) to an index which represents an adequate benchmark shall be understood as a reference to an index whose provider uses a recognised methodology which generally does not result in the exclusion of a major issuer of the market to which it refers.
- (4) The reference in regulation 50(1) to an index which is published in an appropriate manner shall be understood as a reference to an index which fulfils the following criteria—
- (a) it is accessible to the public;
- (b) the index provider is independent of the index-replicating UCITS.
- (5) Subregulation (4)(b) shall not preclude index providers and the UCITS forming part of the same economic group, provided that effective arrangements for the management of conflicts of interest are in place.”.

Dated 13th December, 2012.

G H LICUDI QC,  
Minister with responsibility for financial services.

**EXPLANATORY MEMORANDUM**

These Regulations into the law of Gibraltar Commission Directive 2007/16/EC of 19 March 2007 implementing Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as replaced by Directive 2009/65/EC.