

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3844 of 12 April, 2011

LEGAL NOTICE NO. 47 OF 2011.

**FINANCIAL SERVICES (CAPITAL ADEQUACY OF INVESTMENT
FIRMS) (AMENDMENT) REGULATIONS 2011**

In exercise of the powers conferred on him by section 53 of the Financial Services Act 1989 and all other enabling powers, and in order to transpose into the law of Gibraltar Commission Directive 2009/27/EC of 7 April 2009 which amends Directive 2006/49/EC of the European Parliament and Council as regards technical provisions concerning risk management and Article 2 of Directive 2009/111/EC of the European Parliament and Council of 16 September 2009 to the extent that it also amends Directive 2006/49/EC, the Minister has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Financial Services (Capital Adequacy of Investment Firms) (Amendment) Regulations 2011 and shall come into operation on the day of publication.

Amendments to the Financial Services (Capital Adequacy of Investment Firms) Regulations 2007.

2. The Financial Services (Capital Adequacy of Investment Firms) Regulations 2007 are amended in accordance with regulations 3 to 13.

Amendment of regulation 8.

3.(1) Regulation 8(a) is amended by—

- (a) substituting “plus the related share premium accounts, it fully absorbs losses in going concern situations and in the event of bankruptcy or liquidation ranks after all other claims” for “plus share premium accounts, but excluding cumulative preferential shares”;
- (b) inserting new paragraph (ba) after paragraph (b) as follows—

- “(ba) instruments other than those referred to in paragraph which meet the requirements of regulations 12(a), (c), (d) and (e) and 12A of the FSCACI Regulations.”.

Amendment of regulation 24.

4. Regulation 24(1) is amended by inserting “other than one which fulfils the criteria in regulation 16(2) or (3)” after “Investment firm”.

Amendment of regulation 26.

5. Regulation 26(6) is amended by substituting “regulations 57(4)(c) and 64(1)” for “regulations 66(2)(i), 68(3) and 69”.

Amendment of regulation 27.

- 6.(1) Regulation 27(a) is amended by substituting “the limit in regulation 64(1) of those Regulations” for “those limits”.

- (2) Regulation 27(b) is amended by substituting “the limit in regulation 64(1)” for “the limits in regulations 64(1), (3) and (4)”.

- (3) Regulation 27(e) is amended by substituting “the limit laid down in regulation 64(1)” for “the limits laid down in regulations 64(1), (3) and (4)” and by substituting “has” for “have”.

Amendment of regulation 28.

7. Regulation 28(1) is amended by omitting “and (2)”.

Amendment of regulation 31.

8. Regulation 31 is amended by inserting the following sub-regulation after sub-regulation (4)–

- “(5) An investment firm shall comply with the requirements of regulation 22 (2) of the FSCACI Regulations as regards the format of the reports and their frequency of submission to the Authority as from the 31 December 2012.”.

Amendment of regulation 33.

9. Regulation 33 is amended by inserting the following sub-regulation after sub-regulation (3)–

- “(4) Regulation 82A of the FSCACI Regulations, except its sub-regulation (2)(b), shall apply mutatis mutandis to the supervision of investment firms if the firms are not able to meet the criteria specified in regulations 16(2) and (3) and 36(8).

Amendment of regulation 36.

10.(1) Regulation 36(3) is amended by substituting “2014” for “2010”.

(2) Regulation 36(12) is repealed.

(3) Regulation 36(14) is amended by substituting “2014” for “2010”.

Amendment to Schedule 1.

11.(1) Paragraph 8B of Schedule 1 is substituted by the following paragraph–

“B. TREATMENT OF THE PROTECTION BUYER

- (1) For the party who transfers credit risk (the protection buyer), the positions are determined as the mirror principle of the protection seller, with the exception of a credit linked note (which entails no short position in the issuer). If at a given moment there is a call option in combination with a step- up, such moment is treated as the maturity of the protection. In the case of first-to-default credit derivatives and nth-to-default credit derivatives, the following treatment applies instead of the mirror principle.

First-to-default credit derivatives

- (2) Where an investment firm obtains credit protection for a number of reference entities underlying a credit derivative under the terms that the first default among the assets shall

trigger payment and that this credit event shall terminate the contract, the investment firm may offset specific risk for the reference entity to which the lowest specific risk percentage charge among the underlying reference entities applies according to Table 1 of paragraph 14.

Nth-to-default credit derivatives

- (3) Where the nth default among the exposures triggers payment under the credit protection, the protection buyer may only offset specific risk if protection has also been obtained for defaults 1 to n-1 or when n-1 defaults have already occurred. In such cases, the methodology set out above for first-to-default credit derivatives shall be followed appropriately modified for nth-to-default products.”.
- (2) Table 1 of paragraph 14 of Schedule 1 is amended as follows—
 - (a) in the first column of the second row, “paragraph 28” is substituted by “paragraph 29” and “step 1 or 2” is substituted by “step 1, 2 or 3”;
 - (b) in the third indent in the second column of the second row, “final” is omitted;
 - (c) in the first column of the third row, “step 3 or 4” is substituted by “step 4”.

Amendment to Schedule 2.

12. Paragraph 11 of Schedule 2 is substituted by the following paragraph—

“11. Where a credit derivative included in the trading book forms part of an internal hedge and the credit protection is recognised under the FSCACI Regulations, no counterparty risk shall be deemed to arise from the position in the credit derivative. Alternatively, an investment firm may consistently include for the purposes of calculating capital requirements for counterparty credit risk all credit derivatives included in the trading book forming part of internal hedges or purchased as protection against a CCR exposure where the credit protection is recognised under those Regulations.”.

Amendment to Schedule 7.

13. In the second sentence of paragraph 3 of Part C of Schedule 7, “Where” is substituted by “Without prejudice to the second sentence of paragraph 11 of Schedule 2, where”.

Dated 12th April, 2011.

P R CARUANA,
Minister with responsibility for financial services.

