2006-32
Revoked
Subsidiary
2007/120

FINANCIAL SERVICES (MARKETS IN FINANCIAL INSTRUMENTS) REGULATIONS 2007

Subsidiary Legislation made under s. 17, 25, 28, 48, 49, 50 and 62 of the Financial Services (Markets in Financial Instruments) Act 2006 and section 23 of the Interpretation and General Clauses Act.

Revoked by LN. 2017/135 as from 3.1.2018

FINANCIAL SERVICES (MARKETS IN FINANCIAL INSTRUMENTS) REGULATIONS 2007

(LN. 2007/120)

Commencement **1.11.2007**

Amending enactments	Relevant current provisions	Commencement date
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EU Legislation/International Agreements involved:
Directive 85/611/EEC
Directive 2001/34/EC
Directive 2003/71/EC
Directive 2004/39/EC
Directive 2006/31/EC
Directive 2006/73/EC
Regulation (EC) No 1287/2006

ARRANGEMENT OF REGULATIONS.

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FINANCIAL SERVICES (MARKETS IN FINANCIAL INSTRUMENTS) REGULATIONS 2007

2006-32
Revoked
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FINANCIAL SERVICES (MARKETS IN FINANCIAL INSTRUMENTS) REGULATIONS 2007

In exercise of the powers conferred on me by section 17, 25, 28, 48, 49, 50 and 62 of the Financial Services (Markets in Financial Instruments) Act 2006 and section 23 of the Interpretation and General Clauses Act and in order to–

(a) transpose into the law of Gibraltar Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive;

(b) transpose into the law of Gibraltar Directive 2006/31/EC of the European Parliament and of the Council of 5 April 2006 amending Directive 2004/39/EC on markets in financial instruments, as regards certain deadlines;

(c) make further provision for the implementation in Gibraltar of Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards recordkeeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive,

I have made the following Regulations–

PART I
PRELIMINARY AND INTERPRETATION

Title and commencement.

1. These Regulations may be cited as the Financial Services (Markets in Financial Instruments) Regulations 2007 and shall come into operation on 1 November 2007.

Interpretation.

2.(1) For the purposes of these Regulations, and unless the context otherwise requires–

"bank holiday" and "public holiday" shall be interpreted in accordance with the provisions of the Banking and Financial Dealings Act or the Interpretation and General Clauses Act, as the case may be;

"business day" means a day which is not a bank or public holiday;

"distribution channels" means a channel through which information is, or is likely to become, publicly available. For these purposes, "Likely to become publicly available information" means information to which a large number of persons have access;

"durable medium" means any instrument which enables a client to store information addressed personally to that client in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

"EEA" shall be construed in accordance with the provisions of the European Communities Act;

"financial analyst" means a relevant person who produces the substance of investment research;

"group", in relation to an investment firm, means the group of which that firm forms a part, consisting of a parent undertaking, its subsidiaries and the entities in which the parent undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship as follows–

(a) undertakings that are managed on a unified basis pursuant to a contract concluded between the undertakings or provisions in the memorandum or regulations of association of those undertakings; or

(b) the administrative, management or supervisory bodies of an undertaking and of one or more other undertakings consist for the major part of the same persons in office during the financial year and until the consolidated accounts are drawn up;

"outsourcing" means an arrangement of any form between an investment firm and a service provider by which that service provider performs a process, a service or an activity which would otherwise be undertaken by the investment firm itself;

"person with whom a relevant person has a family relationship" means any of the following:

(a) the spouse of the relevant person or any partner of that person considered by national law as equivalent to a spouse;

(b) a dependent child or stepchild of the relevant person;

(c) any other relative of the relevant person who has shared the same household as that person for at least one year on the date of the personal transaction concerned;

"relevant person" in relation to an investment firm, means any of the following–

(a) a director, partner or equivalent, manager or tied agent of the firm;

(b) a director, partner or equivalent, or manager of any tied agent of the firm;

(c) an employee of the firm or of a tied agent of the firm, as well as any other natural person whose services are placed at the disposal and under the control of the firm or a tied agent of the firm and who is involved in the provision by the firm of investment services and activities;

(d) a natural person who is directly involved in the provision of services to the investment firm or to its tied agent under an outsourcing arrangement for the purpose of the provision by the firm of investment services and activities;

"securities financing transaction" has the meaning given in Commission Regulation (EC) No 1287/2006 as set out in the Schedule;

"senior management" means the person or persons who effectively direct the business of the investment firm;

"State" includes territory.

(2) For the purposes of these Regulations and of the Act–

(a) any reference to "competent authority" means a reference to the Financial Services Commission; and

(b) a reference to "Member State" includes a reference to a State party to the EEA Agreement, and a reference to the "Community" includes a reference to the EEA.

Conditions applying to the provision of information.

3.(1) Where, for the purposes of these Regulations, information is required to be provided in a durable medium, investment firms shall provide that information in a durable medium other than on paper only if–

(a) the provision of that information in that medium is appropriate to the context in which the business between the firm and the client is, or is to be, carried on; and

(b) the person to whom the information is to be provided, when offered the choice between information on paper or in that other durable medium, specifically chooses the provision of the information in that other medium.

(2) Where, pursuant to regulation 29, 30, 31, 32, 33 or 46(2) of these Regulations, an investment firm provides information to a client by means of a website and that information is not addressed personally to the client, the following conditions shall be satisfied–

(a) the provision of that information in that medium must be appropriate to the context in which the business between the firm and the client is, or is to be, carried on;

(b) the client must specifically consent to the provision of that information in that form;

(c) the client must be notified electronically of the address of the website, and the place on the website where the information may be accessed;

(d) the information must be up to date;

(e) the information must be accessible continuously by means of that website for such period of time as the client may reasonably need to inspect it.

(3) For the purposes of this regulation, the provision of information by means of electronic communications shall be treated as appropriate to the context in which the business between the firm and the client is, or is to be, carried on if there is evidence that the client has regular access to the internet. The provision by the client of an e-mail address for the purposes of the carrying on of that business shall be treated as such evidence.

Additional requirements on investment firms in certain cases.

4.(1) The competent authority may retain or impose requirements additional to those in these Regulations only in those exceptional cases where such

requirements are objectively justified and proportionate so as to address specific risks to investor protection or to market integrity that are not adequately addressed by these Regulations, and provided that one of the following conditions is met–

(a) the specific risks addressed by the requirements are of particular importance in the circumstances of the market structure of Gibraltar;

(b) the requirement addresses risks or issues that emerge or become evident after the date of application of these Regulations and that are not otherwise regulated pursuant to any statutory provision.

(2) Any requirements imposed under sub-regulation (1) shall not restrict or otherwise affect the rights of investment firms under sections 31 and 32 of the Act and shall be notified to the Minister forthwith, who may amend or revoke any requirements imposed under sub-regulation (1) by the Competent Authority.

(3) The Minister shall ensure the European Commission is notified–

(a) of any requirement which he intends to retain in accordance with sub-regulation (1) before the date of coming into force of these Regulations; and

(b) of any requirement which he intends to impose in accordance with sub-regulation (1) at least one month before the date appointed for that requirement to come into force,

and in each case, the notification shall include a justification for that requirement.

PART II
ORGANISATIONAL REQUIREMENTS

General organisational requirements.

5.(1) Investment firms shall comply with the following requirements–

(a) to establish, implement and maintain decision-making procedures and an organisational structure which clearly and in a documented manner specifies reporting lines and allocates functions and responsibilities;

(b) to ensure that relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities;

(c) to establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the investment firm;

(d) to employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them;

(e) to establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the investment firm;

(f) to maintain adequate and orderly records of their business and internal organisation;

(g) to ensure that the performance of multiple functions by relevant persons does not and is not likely to prevent those persons from discharging any particular function soundly, honestly, and professionally;

(h) to ensure that, for those purposes, they take into account the nature, scale and complexity of the business of the firm, and the nature and range of investment services and activities undertaken in the course of that business.

(2) Investment firms shall–

(a) establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question;

(b) establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to their systems and procedures, the preservation of essential data and functions, and the maintenance of investment services and activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of their investment services and activities;

(c) establish, implement and maintain accounting policies and procedures that enable them, at the request of the competent

authority, to deliver in a timely manner to the competent authority financial reports which reflect a true and fair view of their financial position and which comply with all applicable accounting standards and rules;

(d) monitor and, on a regular basis, evaluate the adequacy and effectiveness of their systems, internal control mechanisms and arrangements established in accordance with this regulation, and take appropriate measures to address any deficiencies.

Compliance.

6.(1) Investment firms shall–

(a) establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the firm to comply with its obligations under the Act, as well as the associated risks, and put in place adequate measures and procedures designed to minimise such risk and to enable the competent authority to exercise its powers effectively under the Act;

(b) take into account the nature, scale and complexity of the business of the firm, and the nature and range of investment services and activities undertaken in the course of that business.

(2) Investment firms shall establish and maintain a permanent and effective compliance function which operates independently and which has the following responsibilities–

(a) to monitor and, on a regular basis, to assess the adequacy and effectiveness of the measures and procedures put in place in accordance with the first subparagraph of sub-regulation (1), and the action taken to address any deficiencies in the firm's compliance with its obligations;

(b) to advise and assist the relevant persons responsible for carrying out investment services and activities to comply with the firm's obligations under the Act.

(3) In order to enable the compliance function to discharge its responsibilities properly and independently, investment firms shall ensure that the following conditions are satisfied–

(a) the compliance function must have the necessary authority, resources, expertise and access to all relevant information;

(b) a compliance officer must be appointed and must be responsible for the compliance function and for any reporting as to compliance required by regulation 9;

(c) the relevant persons involved in the compliance function must not be involved in the performance of services or activities they monitor;

(d) the method of determining the remuneration of the relevant persons involved in the compliance function must not compromise their objectivity and must not be likely to do so.

(4) Notwithstanding the foregoing, an investment firm shall not be required to comply with sub-regulation (3)(c) or (d) if it is able to demonstrate that in view of the nature, scale and complexity of its business, and the nature and range of investment services and activities, the requirements under those paragraphs are not proportionate and that its compliance function continues to be effective.

Risk management.

7.(1) Investment firms shall take the following steps–

(a) establish, implement and maintain adequate risk management policies and procedures which identify the risks relating to the firm's activities, processes and systems, and where appropriate, set the level of risk tolerated by the firm;

(b) adopt effective arrangements, processes and mechanisms to manage the risks relating to the firm's activities, processes and systems, in light of that level of risk tolerance;

(c) monitor the following–

(i) the adequacy and effectiveness of the investment firm's risk management policies and procedures;

(ii) the level of compliance by the investment firm and its relevant persons with the arrangements, processes and mechanisms adopted in accordance with paragraph (b);

(iii) the adequacy and effectiveness of measures taken to address any deficiencies in the policies, procedures,

arrangements, processes and mechanisms referred to in paragraph (b) including failures by the relevant persons to comply with such arrangements, processes and mechanisms or follow such policies and procedures.

(2) Investment firms, where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of the investment services and activities undertaken in the course of that business, shall establish and maintain a risk management function that operates independently and carries out the following tasks–

(a) implementation of the policy and procedures referred to in sub-regulation (1);

(b) provision of reports and advice to senior management in accordance with regulation 9.

(3) Where an investment firm is not required under sub-regulation (2) to establish and maintain a risk management function that functions independently, it must nevertheless be able to demonstrate that the policies and procedures which it has adopted in accordance with sub-regulation (1) satisfy the requirements of that provision and are consistently effective.

Internal audit.

8. Investment firms, where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of investment services and activities undertaken in the course of that business, shall establish and maintain an internal audit function which is separate and independent from the other functions and activities of the investment firm and which has the following responsibilities–

(a) to establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the investment firm's systems, internal control mechanisms and arrangements;

(b) to issue recommendations based on the result of work carried out in accordance with paragraph (a);

(c) to verify compliance with those recommendations;

(d) to report in relation to internal audit matters in accordance with regulation 9.

Responsibility of senior management.

9.(1) When allocating functions internally, investment firms shall ensure that senior management, and, where appropriate, the supervisory function, are responsible for ensuring that the firm complies with its obligations under the Act. Without prejudice to the foregoing, senior management and, where appropriate, the supervisory function shall be required to assess and periodically to review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations under the Act and to take appropriate measures to address any deficiencies.

(2) Investment firms shall ensure that senior management receive on a frequent basis, and at least annually, written reports on the matters covered by regulations 6, 7 and 8 indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies.

(3) Investment firms shall ensure that the supervisory function, if any, receives on a regular basis written reports on the same matters.

(4) For the purposes of this regulation, "supervisory function" means the function within an investment firm responsible for the supervision of its senior management.

Complaints handling.

10. Investment firms shall establish, implement and maintain effective and transparent procedures for the reasonable and prompt handling of complaints received from retail clients or potential retail clients, and to keep a record of each complaint and the measures taken for its resolution.

Meaning of "personal transaction".

11. For the purposes of regulation 12 and regulation 25, "personal transaction" means a trade in a financial instrument effected by or on behalf of a relevant person, where at least one of the following criteria are met–

(a) that relevant person is acting outside the scope of the activities he carries out in that capacity;

(b) the trade is carried out for the account of any of the following persons:

(i) the relevant person;

(ii) any person with whom he has a family relationship, or with whom he has close links;

(iii) a person whose relationship with the relevant person is such that the relevant person has a direct or indirect material interest in the outcome of the trade, other than a fee or commission for the execution of the trade.

Personal transactions.

12.(1) Where any relevant person is involved in activities that may give rise to a conflict of interest, or who has access to inside information within the meaning of section 4 of the Market Abuse Act 2005 or to other confidential information relating to clients or transactions with or for clients by virtue of an activity carried out by him on behalf of a firm, such firm shall establish, implement and maintain adequate arrangements aimed at preventing the following activities–

(a) entering into a personal transaction which meets at least one of the following criteria–

(i) that such person is prohibited from entering into it;

(ii) it involves the misuse or improper disclosure of that confidential information;

(iii) it conflicts or is likely to conflict with an obligation of the investment firm under the Act;

(b) advising or procuring, other than in the proper course of his employment or contract for services, any other person to enter into a transaction in financial instruments which, if a personal transaction of the relevant person, would be covered by paragraph (a) or regulation 25(2)(a) or (b) or regulation 47(3);

(c) disclosing, other than in the normal course of his employment or contract for services, any information or opinion to any other person if the relevant person knows, or reasonably ought to know, that as a result of that disclosure that other person will or would be likely to take either of the following steps–

(i) enter into a transaction in financial instruments which, if a personal transaction of the relevant person, would be covered by paragraph (a) or regulation 25(2)(a) or (b) or regulation 47(3);

(ii) advise or procure another person to enter into such a transaction.

(2) The arrangements required under sub-regulation (1) must in particular be designed to ensure that–

(a) each relevant person covered by sub-regulation (1) is aware of the restrictions on personal transactions, and of the measures established by the investment firm in connection with personal transactions and disclosure, in accordance with sub-regulation (1);

(b) the firm is informed promptly of any personal transaction entered into by a relevant person, either by notification of that transaction or by other procedures enabling the firm to identify such transactions; in the case of outsourcing arrangements, the investment firm must ensure that the firm to which the activity is outsourced maintains a record of personal transactions entered into by any relevant person and provides that information to the investment firm promptly on request;

(c) a record is kept of the personal transaction notified to the firm or identified by it, including any authorisation or prohibition in connection with such a transaction.

(3) Sub-regulations (1) and (2) shall not apply to the following kinds of personal transaction–

(a) personal transactions effected under a discretionary portfolio management service where there is no prior communication in connection with the transaction between the portfolio manager and the relevant person or other person for whose account the transaction is executed;

(b) personal transactions in units in collective undertakings that comply with the conditions necessary to enjoy the rights conferred by the Financial Services (Collective Investment Schemes) Act 2005 or are subject to supervision under the law of another Member State which requires an equivalent level of risk spreading in their assets, where the relevant person and any other person for whose account the transactions are effected are not involved in the management of that undertaking.

Meaning of "critical and important operational functions".

13.(1) For the purposes of the Act, an operational function shall be regarded as critical or important if a defect or failure in its performance would materially impair the continuing compliance of an investment firm with the conditions and obligations of its authorisation or its other obligations under

the Act, or its financial performance, or the soundness or the continuity of its investment services and activities.

(2) Without prejudice to the status of any other function, the following functions shall not be considered as critical or important for the purposes of sub-regulation (1)–

(a) the provision to the firm of advisory services, and other services which do not form part of the investment business of the firm, including the provision of legal advice to the firm, the training of personnel of the firm, billing services and the security of the firm's premises and personnel;

(b) the purchase of standardised services, including market information services and the provision of price feeds.

Conditions for outsourcing critical or important operational functions or investment services or activities.

14.(1) When investment firms outsource critical or important operational functions or any investment services or activities, they shall remain fully responsible for discharging all of their obligations under the Act and shall comply, in particular, with the following conditions–

(a) the outsourcing must not result in the delegation by senior management of its responsibility;

(b) the relationship and obligations of the investment firm towards its clients under the terms of the Act must not be altered;

(c) the conditions with which the investment firm must comply in order to be authorised in accordance with the Act, and to remain so, must not be undermined;

(d) none of the other conditions subject to which the firm's authorisation was granted must be removed or modified.

(2) Investment firms shall exercise due skill, care and diligence when entering into, managing or terminating any arrangement for the outsourcing to a service provider of critical or important operational functions or of any investment services or activities. Investment firms shall in particular take the necessary steps to ensure that the following conditions are satisfied–

(a) the service provider must have the ability, capacity, and any authorisation required by law to perform the outsourced functions, services or activities reliably and professionally;

(b) the service provider must carry out the outsourced services effectively, and to this end the firm must establish methods for assessing the standard of performance of the service provider;

(c) the service provider must properly supervise the carrying out of the outsourced functions, and adequately manage the risks associated with the outsourcing;

(d) appropriate action must be taken if it appears that the service provider may not be carrying out the functions effectively and in compliance with applicable laws and regulatory requirements;

(e) the investment firm must retain the necessary expertise to supervise the outsourced functions effectively and manage the risks associated with the outsourcing and must supervise those functions and manage those risks;

(f) the service provider must disclose to the investment firm any development that may have a material impact on its ability to carry out the outsourced functions effectively and in compliance with applicable laws and regulatory requirements;

(g) the investment firm must be able to terminate the arrangement for outsourcing where necessary without detriment to the continuity and quality of its provision of services to clients;

(h) the service provider must cooperate with the competent authority in connection with the outsourced activities;

(i) the investment firm, its auditors and the competent authority must have effective access to data related to the outsourced activities, as well as to the business premises of the service provider; and the competent authority shall have the power to exercise those rights of access;

(j) the service provider must protect any confidential information relating to the investment firm and its clients;

(k) the investment firm and the service provider must establish, implement and maintain a contingency plan for disaster recovery and periodic testing of backup facilities, where that is necessary having regard to the function, service or activity that has been outsourced.

(3) The respective rights and obligations of the investment firms and of the service provider shall be clearly allocated and set out in a written agreement.

(4) Where the investment firm and the service provider are members of the same group, the investment firm may, for the purposes of complying with this regulation and regulation 15, take into account the extent to which the firm controls the service provider or has the ability to influence its actions.

(5) Investment firms shall make available on request to the competent authority all information necessary to enable the authority to supervise the compliance of the performance of the outsourced activities with the requirements of these Regulations.

Service providers located in third countries.

15.(1) In addition to the requirements set out in regulation 14, where an investment firm outsources the investment service of portfolio management provided to retail clients to a service provider located in a third country, that investment firm shall ensure that the following conditions are satisfied–

(a) the service provider must be authorised or registered in its home country to provide that service and must be subject to prudential supervision;

(b) there must be an appropriate cooperation agreement between the competent authority and the supervisory authority of the service provider.

(2) Where one or both of those conditions mentioned in sub-regulation (1) are not satisfied, an investment firm may outsource investment services to a service provider located in a third country only if the firm gives prior notification to the competent authority about the outsourcing arrangement and the competent authority does not object to that arrangement within a reasonable time following receipt of that notification.

(3) Without prejudice to sub-regulation (2), the competent authority shall publish a statement of policy in relation to outsourcing covered by sub-regulation (2). That statement shall set out examples of cases where the competent authority would not, or would be likely not to, object to an outsourcing under sub-regulation (2) where one or both of the conditions in paragraphs (a) and (b) of sub-regulation (1) are not met. It shall include a clear explanation as to why the competent authority considers that in such cases outsourcing would not impair the ability of investment firms to fulfil their obligations under regulation 14.

(4) Nothing in this regulation limits the obligations on investment firms to comply with the requirements in regulation 14.

(5) The competent authority shall publish a list of the supervisory authorities in third countries with which it has cooperation agreements that are appropriate for the purposes of paragraph (b) of sub-regulation (1).

Safeguarding of client financial instruments and funds.

16.(1) For the purposes of safeguarding clients' rights in relation to financial instruments and funds belonging to them, investment firms shall comply with the following requirements–

(a) they must keep such records and accounts as are necessary to enable them at any time and without delay to distinguish assets held for one client from assets held for any other client, and from their own assets;

(b) they must maintain their records and accounts in a way that ensures their accuracy, and in particular their correspondence to the financial instruments and funds held for clients;

(c) they must conduct, on a regular basis, reconciliations between their internal accounts and records and those of any third parties by whom those assets are held;

(d) they must take the necessary steps to ensure that any client financial instruments deposited with a third party, in accordance with regulation 17, are identifiable separately from the financial instruments belonging to the investment firm and from financial instruments belonging to 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) they must take the necessary steps to ensure that client funds deposited, in accordance with regulation 18 in a central bank, a credit institution or a bank authorised in a third country or a qualifying money market fund are held in an account or accounts identified separately from any accounts used to hold funds belonging to the investment firm;

(f) they must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of client assets, or of rights in connection with those assets, as a result of misuse

of the assets, fraud, poor administration, inadequate record-keeping or negligence.

(2) If, for reasons of the applicable law, including in particular the law relating to property or insolvency, the arrangements made by investment firms in compliance with sub-regulation (1) to safeguard clients' rights are not sufficient to satisfy the requirements of the Act, the competent authority shall prescribe the measures that investment firms must take in order to comply with those obligations.

(3) If the applicable law of the jurisdiction in which the client funds or financial instruments are held prevents investment firms from complying with paragraphs (d) or (e) of sub-regulation (1), the competent authority shall prescribe requirements which have an equivalent effect in terms of safeguarding clients' rights.

Depositing client financial instruments.

17.(1) Investment firms–

(a) may deposit financial instruments held by them on behalf of their clients into an account or accounts opened with a third party provided that it 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; and

(b) in so doing, shall in particular take into account the expertise and market reputation of the third party as well as any legal requirements or market practices related to the holding of those financial instruments that could adversely affect clients' rights.

(2) Where the safekeeping of financial instruments for the account of another person is subject to specific regulation and supervision in a jurisdiction where an investment firm proposes to deposit client financial instruments with a third party, the investment firm shall not deposit those financial instruments in that jurisdiction with a third party which is not subject to such regulation and supervision.

(3) Investment firms shall 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 unless one of the following conditions is met–

(a) the nature of the financial instruments or of the investment services connected with those instruments requires them to be deposited with a third party in that third country; or

(b) where the financial instruments are held on behalf of a professional client, that client requests the firm in writing to deposit them with a third party in that third country.

Depositing client funds.

18.(1) Investment firms, promptly on receiving any client funds, shall place those funds into one or more accounts opened with any of the following–

(a) a central bank;

(b) a credit institution authorised in accordance with the Financial Services (Banking) Act or in another Member State in accordance with Directive 2000/12/EC;

(c) a bank authorised in a third country;

(d) a qualifying money market fund:

Provided that paragraph (a) shall not apply to a credit institution authorised under the provisions of–

(i) the Financial Services (Banking) Act in Gibraltar; or

(ii) legislation to substantially similar effect in other Member States,

in relation to deposits within the meaning of that Act held by that institution.

(2) For the purposes of paragraph (d) of sub-regulation (1), and of regulation 16(1)(e), a "qualifying money market fund" means a collective investment undertaking–

(a) authorised under the Financial Services (Collective Investment Schemes) Act 2005; or

(b) which is subject to supervision and, if applicable, authorised by an authority under the national law of a Member State, and which satisfies the following conditions–

(i) 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;

(ii) 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. It may also achieve this objective by investing on an ancillary basis in deposits with credit institutions;

(iii) it must provide liquidity through same day or next day settlement.

For the purposes of paragraph (b)(ii)–

(i) a money market instrument shall be considered to be of high quality if it has been awarded the highest available credit rating by each competent rating agency which has rated that instrument. An instrument that is not rated by any competent rating agency shall not be considered to be of high quality; and

(ii) a rating agency shall be considered to be competent if it issues credit ratings in respect of money market funds regularly and on a professional basis and is regarded by the competent authority as an eligible External Credit Assessment Institution within the meaning of article 81 of Directive 2006/48/EC.

(3) Investment firms–

(a) not depositing client funds with a central bank, shall exercise all due skill, care and diligence in the selection, appointment and periodic review of the credit institution, bank or money market fund where the funds are placed and the arrangements for the holding of those funds;

(b) shall take into account the expertise and market reputation of such institutions or money market funds with a view to ensuring the protection of clients' rights, as well as any legal or regulatory requirements or market practices related to the holding of client funds that could adversely affect clients' rights; and

(c) shall ensure that clients have the right to oppose the placement of their funds in a qualifying money market fund.

Use of client financial instruments.

19.(1) Investment firms shall not enter into arrangements for securities financing transactions in respect of financial instruments held by them on behalf of a client, or otherwise use such financial instruments for their own account or the account of another client of the firm, unless the following conditions are met–

(a) the client must have given his prior express consent to the use of the instruments on specified terms, as evidenced, in the case of a retail client, by his signature or equivalent alternative mechanism; and

(b) the use of that client's financial instruments is restricted to the specified terms to which the client consents.

(2) Investment firms shall not 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 otherwise use financial instruments held in such an account for their own account or for the account of another client unless, in addition to the conditions set out in sub-regulation (1), at least one of the following conditions is met–

(a) each client whose financial instruments are held together in an omnibus account must have given prior express consent in accordance with paragraph (a) of sub-regulation (1);

(b) the investment firm must have in place systems and controls which ensure that only financial instruments belonging to clients who have given prior express consent in accordance with paragraph (a) of sub-regulation (1) are so used; and

(c) the investment firm maintains records which include details of the client on whose instructions the use of the financial instruments has been effected, as well as the number of financial instruments used belonging to each client who has given his consent, so as to enable the correct allocation of any loss.

Reports by external auditors.

20. Investment firms shall ensure that their external auditors report at least annually to the competent authority on the adequacy of the firm's arrangements under section 13(7) and (8) of the Act and these Regulations.

Conflicts of interest potentially detrimental to a client.

21. For the purposes of identifying the types of conflict of interest that arise in the course of providing investment and ancillary services or a combination thereof and whose existence may damage the interests of a client, investment firms shall take into account, by way of minimum criteria the question of whether the investment firm or a relevant person, or a person directly or indirectly linked by control to the firm, is in any of the following situations, whether as a result of providing investment or ancillary services or investment activities or otherwise–

(a) the firm or that person is likely to make a financial gain, or avoid a financial loss, at the expense of the client;

(b) the firm or that person has an interest in the outcome of a service provided to the client or of a transaction carried out on behalf of the client, which is distinct from the client's interest in that outcome;

(c) the firm or that person has a financial or other incentive to favour the interest of another client or group of clients over the interests of the client;

(d) the firm or that person carries on the same business as the client;

(e) the firm or that person receives or will receive from a person other than the client an inducement in relation to a service provided to the client, in the form of monies, goods or services, other than the standard commission or fee for that service.

Conflicts of interest policy.

22.(1) Investment firms shall establish, implement and maintain an effective conflicts of interest policy set out in writing and appropriate to the size and organisation of the firm and the nature, scale and complexity of its business.

(2) Where the firm is a member of a group, the policy referred to in sub-regulation (1) must also take into account any circumstances, of which the firm is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the group.

(3) The conflicts of interest policy established in accordance with sub-regulations (1) and (2) shall include the following content–

(a) it must identify, with reference to the specific investment services and activities and ancillary services carried out by or on behalf of the investment firm, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of one or more clients;

(b) it must specify procedures to be followed and measures to be adopted in order to manage such conflicts.

(4) The procedures and measures provided for in sub-regulation (3)(b) shall be designed to ensure that relevant persons engaged in different business activities involving a conflict of interest of the kind specified in sub-regulation (3)(a) carry on those activities at a level of independence appropriate to the size and activities of the investment firm and of the group to which it belongs, and to the materiality of the risk of damage to the interests of clients.

(5) For the purposes of sub-regulation (3)(b), the procedures to be followed and measures to be adopted shall include such of the following as are necessary and appropriate for the firm to ensure the requisite degree of independence–

(a) effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more clients;

(b) the separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services to, clients whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the firm;

(c) the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;

(d) measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out investment or ancillary services or activities;

(e) measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate investment or ancillary services or activities where such involvement may impair the proper management of conflicts of interest.

(6) Where the adoption or the practice of one or more of the measures and procedures referred to above does not ensure the requisite degree of independence, investment firms shall adopt such alternative or additional measures and procedures as are necessary and appropriate for those purposes.

(7) Disclosure to clients, pursuant to section 18 of the Act shall be made in a durable medium and include sufficient detail, taking into account the nature of the client, to enable that client to take an informed decision with respect to the investment or ancillary service in the context of which the conflict of interest arises.

Record of services or activities giving rise to detrimental conflict of interest.

23. Investment firms shall keep and regularly update a record of the kinds of investment or ancillary service or investment activity carried out by or on behalf of the firm in which a conflict of interest entailing a material risk of damage to the interests of one or more clients has arisen or, in the case of an ongoing service or activity, may arise.

Investment research.

24.(1) For the purposes of regulation 25, "investment research" means research or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers of financial instruments, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public, and in relation to which the following conditions are met–

(a) it is labelled or described as investment research or in similar terms, or is otherwise presented as an objective or independent explanation of the matters contained in the recommendation; and

(b) if the recommendation in question were made by an investment firm to a client, it would not constitute the provision of investment advice for the purposes of the Act.

(2) A recommendation as defined in this regulation but relating to financial instruments as defined in the Act that does not meet the conditions set out in sub-regulation (1) shall be treated as a marketing communication for the purposes of the Act and any investment firm that produces or disseminates the recommendation shall ensure that it is clearly identified as such.

(3) Additionally, firms referred to in the previous sub-regulation shall ensure that any such recommendation contains a clear and prominent statement that (or, in the case of an oral recommendation, to the effect that) it has not been prepared in accordance with legal requirements designed to promote the independence of investment research, and that it is not subject to any prohibition on dealing ahead of the dissemination of investment research.

(4) For the purposes of this regulation, “recommendation" means research or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers of financial instruments, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public.

Additional organisational requirements where a firm produces and disseminates investment research.

25.(1) Investment firms which produce, or arrange for the production of, investment research that is intended or likely to be subsequently disseminated to clients of the firm or to the public, under their own responsibility or that of a member of their group, shall ensure the implementation of all the measures set out in regulation 22 in relation to the financial analysts involved in the production of the investment research and other relevant persons whose responsibilities or business interests may conflict with the interests of the persons to whom the investment research is disseminated.

(2) Investment firms covered by sub-regulation (1) shall have in place arrangements designed to ensure that the following conditions are satisfied–

(a) financial analysts and other relevant persons must not undertake personal transactions or trade, other than as market makers acting in good faith and in the ordinary course of market making or in the execution of an unsolicited client order, on behalf of any other person, including the investment firm in any of the following–

(i) financial instruments to which investment research relates; or

(ii) any related financial instruments,

with knowledge of the likely timing or content of that investment research which is not publicly available or available to clients; and which cannot readily be inferred from information that is so available, until the recipients of the investment research have had a reasonable opportunity to act on it;

(b) in circumstances not covered by paragraph (a), financial analysts and any other relevant persons involved in the production of investment research must not undertake personal transactions–

(i) in financial instruments to which the investment research relates; or

(ii) in any related financial instruments,

contrary to current recommendations, except in exceptional circumstances and with the prior approval of a member of the firm's legal or compliance function;

(c) the investment firms themselves, financial analysts, and other relevant persons involved in the production of the investment research must not accept inducements from those with a material interest in the subject-matter of the investment research;

(d) the investment firms themselves, financial analysts, and other relevant persons involved in the production of the investment research must not promise issuers favourable research coverage;

(e) issuers, relevant persons other than financial analysts, and any other persons must not before the dissemination of investment research be permitted to review a draft of the investment research for the purpose of verifying the accuracy of factual statements made in that research, or for any other purpose other than verifying compliance with the firm's legal obligations, if the draft includes a recommendation or a target price.

(3) For the purposes of this regulation, "related financial instrument" means a financial instrument the price of which is closely affected by price movements in another financial instrument which is the subject of investment research, and includes a derivative on that other financial instrument.

(4) Investment firms which disseminate investment research produced by another person to the public or to clients shall be exempt from complying with sub-regulation (1) if the following criteria are met–

(a) the person that produces the investment research is not a member of the group to which the investment firm belongs;

(b) the investment firm does not substantially alter the recommendations within the investment research;

(c) the investment firm does not present the investment research as having been produced by it;

(d) the investment firm verifies that the producer of the research is subject to requirements equivalent to the requirements under these Regulations in relation to the production of that research, or has established a policy setting such requirements.

PART III
OPERATING CONDITIONS FOR INVESTMENT FIRMS

Inducements.

26.(1) Investment firms shall not be regarded as acting honestly, fairly and professionally in accordance with the best interests of a client if, in relation to the provision of an investment or ancillary service to the client, they pay or are paid any fee or commission, or provide or are provided with any non-monetary benefit, other than the following–

(a) one paid or provided to or by the client or a person on behalf of the client;

(b) one paid or provided to or by a third party or a person acting on behalf of a third party, where the following conditions are satisfied–

(i) the existence, nature and amount of the fee, commission or benefit, or, where the amount cannot be ascertained, the method of calculating that amount, are clearly

disclosed to the client, in a manner that is comprehensive, accurate and understandable, prior to the provision of the relevant investment or ancillary service;

(ii) the payment of the fee or commission, or the provision of the non-monetary benefit is designed to enhance the quality of the relevant service to the client and not impair compliance with the firm's duty to act in the best interests of the client;

(c) one constituting proper fees necessary for the provision of investment services, such as custody costs, settlement and exchange fees, regulatory levies or legal fees, and which, by their nature, cannot give rise to conflicts with the firm's duties to act honestly, fairly and professionally in accordance with the best interests of its clients.

(2) An investment firm, for the purposes of paragraph (b)(i), shall be permitted to disclose the essential terms of the arrangements relating to the fee, commission or non-monetary benefit in summary form, provided that it undertakes to disclose further details at the request of the client and provided that it honours that undertaking.

Conditions with which information must comply in order to be fair, clear and not misleading.

27.(1) Investment firms shall ensure that all information they address to, or disseminate in such a way that it is likely to be received by, retail clients or potential retail clients, including marketing communications, satisfies the conditions laid down in this regulation.

(2) The information referred to in sub-regulation (1) shall consist of the following–

(a) it shall include the name of the investment firm;

(b) it shall be accurate and in particular shall not emphasise any potential benefits of an investment service or financial instrument without also giving a fair and prominent indication of any relevant risks;

(c) it shall be sufficient for, and presented in a way that is likely to be understood by the average member of the group to whom it is directed or by whom it is likely to be received; and

(d) it shall not disguise, diminish or obscure important items, statements or warnings.

(3) Where the information compares investment or ancillary services, financial instruments, or persons providing investment or ancillary services, the following conditions shall be satisfied–

(a) the comparison must be meaningful and presented in a fair and balanced way;

(b) the sources of the information used for the comparison must be specified;

(c) the key facts and assumptions used to make the comparison must be included.

(4) Where the information contains an indication of past performance of a financial instrument, a financial index or an investment service, the following conditions shall be satisfied–

(a) that indication must not be the most prominent feature of the communication;

(b) the information must include appropriate performance information which covers–

(i) the immediately preceding 5 years or the whole period for which the financial instrument has been offered or the financial index has been established, or the investment service has been provided if less than five years; or

(ii) such longer period as the firm may decide,

and in every case that performance information must be based on complete 12-month periods;

(c) the reference period and the source of information must be clearly stated;

(d) the information must contain a prominent warning that the figures refer to the past and that past performance is not a reliable indicator of future results;

(e) where the indication relies on figures denominated in a currency other than that of the Member State in which the retail client or potential retail client is resident, the currency must be

clearly stated, together with a warning that the return may increase or decrease as a result of currency fluctuations;

(f) where the indication is based on gross performance, the effect of commissions, fees or other charges must be disclosed.

(5) Where the information includes or refers to simulated past performance, it must relate to a financial instrument or a financial index, and the following conditions shall be satisfied–

(a) the simulated past performance must be based on the actual past performance of one or more financial instruments or financial indices which are the same as, or underlie, the financial instrument concerned;

(b) in respect of the actual past performance referred to in paragraph (a), the conditions set out in paragraphs (a) to (c), (e) and (f) of sub-regulation (4) must be complied with;

(c) the information must contain a prominent warning that the figures refer to simulated past performance and that past performance is not a reliable indicator of future performance.

(6) Where the information contains information on future performance, the following conditions shall be satisfied–

(a) the information must not be based on or refer to simulated past performance;

(b) it must be based on reasonable assumptions supported by objective data;

(c) where the information is based on gross performance, the effect of commissions, fees or other charges must be disclosed;

(d) it must contain a prominent warning that such forecasts are not a reliable indicator of future performance.

(7) Where the information refers to a particular tax treatment, it shall prominently state that the tax treatment depends on the individual circumstances of each client and may be subject to change in the future.

(8) The information shall not use the name of any competent authority in such a way that would indicate or suggest endorsement or approval by that authority of the products or services of the investment firm.

Information concerning client categorisation.

28.(1) Investment firms shall notify new clients, and existing clients that the investment firm has newly categorised as required by the Act, of their categorisation as a retail client, a professional client or an eligible counterparty in accordance with the Act.

(2) Investment firms shall inform clients in a durable medium about any right that client has to request a different categorisation and about any limitations to the level of client protection that it would entail.

(3) Investment firms shall be permitted, either on their own initiative or at the request of the client concerned–

(a) to treat as a professional or retail client a client that might otherwise be classified as an eligible counterparty pursuant to section 24 of the Act;

(b) to treat as a retail client a client that is considered as a professional client pursuant to Section I of Schedule 2 to the Act.

General requirements for information to clients.

29.(1) Investment firms, in good time before a retail client or potential retail client is bound by any agreement for the provision of investment services or ancillary services or before the provision of those services, whichever is the earlier, shall provide that client or potential client with the following information–

(a) the terms of any such agreement;

(b) the information required by regulation 30 relating to that agreement or to those investment or ancillary services.

(2) Investment firms, in good time before the provision of investment services or ancillary services to retail clients or potential retail clients, shall provide the information required under regulations 30 to 33.

(3) Investment firms shall provide professional clients with the information referred to in regulation 32 in good time before the provision of the service concerned.

(4) The information referred to in sub-regulations (1) to (3) shall be provided in a durable medium or by means of a website (where that does not

constitute a durable medium) provided that the conditions specified in regulation 3 are satisfied.

(5) By way of exception to sub-regulations (1) and (2), investment firms shall be permitted to provide the information required under sub-regulation (1) to a retail client immediately after that client is bound by any agreement for the provision of investment services or ancillary services, and the information required under sub-regulation (2) immediately after starting to provide the service in the following circumstances–

(a) where the firm was unable to comply with the time limits specified in sub-regulations (1) and (2) because, at the request of the client, the agreement was concluded using a means of distance communication which prevents the firm from providing the information in accordance with sub-regulation (1) or (2); or

(b) where in any case where paragraph 3 of Schedule 1 to the Financial Services (Distance Marketing) Act 2000 does not otherwise apply, the investment firm complies with the requirements of that paragraph in relation to the retail client or potential retail client, as if that client or potential client were a "consumer" and the investment firm were a "supplier" within the meaning of the Act.

(6) Investment firms shall notify a client in good time about any material change to the information provided under regulations 30 to 33 which is relevant to a service that the firm is providing to that client. That notification shall be given in a durable medium if the information to which it relates is given in a durable medium.

(7) Investment firms shall ensure that information contained in a marketing communication is consistent with any information the firm provides to clients in the course of carrying on investment and ancillary services.

(8) Where a marketing communication contains an offer or invitation of the following nature–

(a) an offer to enter into an agreement in relation to a financial instrument or investment service or ancillary service with any person who responds to the communication;

(b) an invitation to any person who responds to the communication to make an offer to enter into an agreement in relation to a financial instrument or investment service or ancillary service,

and specifies the manner of response or includes a form by which any response may be made, it shall include such of the information referred to in regulations 30 to 33 as is relevant to that offer or invitation.

(9) However, sub-regulation (8)(a) shall not apply if, in order to respond to an offer or invitation contained in the marketing communication, the potential retail client must refer to another document or documents, which, alone or in combination, contain that information.

Information about the investment firm and its services for retail clients and potential retail clients.

30.(1) Investment firms shall, where relevant, provide retail clients or potential retail clients with the following general information–

(a) the name and address of the investment firm, and the contact details necessary to enable clients to communicate effectively with the firm;

(b) the languages in which the client may communicate with the investment firm, and receive documents and other information from the firm;

(c) the methods of communication to be used between the investment firm and the client including, where relevant, those for the sending and reception of orders;

(d) a statement of the fact that the investment firm is authorised and the name and contact address of the competent authority that has authorised it;

(e) where the investment firm is acting through a tied agent, a statement of this fact specifying the Member State in which that agent is registered;

(f) the nature, frequency and timing of the reports on the performance of the service to be provided by the investment firm to the client in accordance with section 19 of the Act;

(g) if the investment firm holds client financial instruments or client funds, a summary description of the steps which it takes to ensure their protection, including summary details of any relevant investor compensation or deposit guarantee scheme which applies to the firm by virtue of its activities in a Member State;

(h) a description, which may be provided in summary form, of the conflicts of interest policy maintained by the firm in accordance with regulation 22;

(i) at any time that the client requests it, further details of that conflicts of interest policy in a durable medium or by means of a website (where that does not constitute a durable medium) provided that the conditions specified in regulation 3 are satisfied.

(2) When providing the service of portfolio management, investment firms shall establish an appropriate method of evaluation and comparison such as a meaningful benchmark, based on the investment objectives of the client and the types of financial instruments included in the client portfolio, so as to enable the client for whom the service is provided to assess the firm's performance.

(3) Where investment firms propose provide portfolio management services to a retail client or potential retail client, they shall provide the client, in addition to the information required under sub-regulation (1), with such of the following information as is applicable–

(a) information on the method and frequency of valuation of the financial instruments in the client portfolio;

(b) details of any delegation of the discretionary management of all or part of the financial instruments or funds in the client portfolio;

(c) a specification of any benchmark against which the performance of the client portfolio will be compared;

(d) the types of financial instrument that may be included in the client portfolio and types of transaction that may be carried out in such instruments, including any limits;

(e) the management objectives, the level of risk to be reflected in the manager's exercise of discretion, and any specific constraints on that discretion.

Information about financial instruments.

31.(1) Investment firms shall provide clients or potential clients with a general description of the nature and risks of financial instruments, taking into account, in particular, the client's categorisation as either a retail client

or a professional client. That description must explain the nature of the specific type of instrument concerned, as well as the risks particular to that specific type of instrument in sufficient detail to enable the client to take investment decisions on an informed basis.

(2) The description of risks shall include, where relevant to the specific type of instrument concerned and the status and level of knowledge of the client, the following elements–

(a) the risks associated with that type of financial instrument including an explanation of leverage and its effects and the risk of losing the entire investment;

(b) the volatility of the price of such instruments and any limitations on the available market for such instruments;

(c) the fact that an investor might assume, as a result of transactions in such instruments, financial commitments and other additional obligations, including contingent liabilities, additional to the cost of acquiring the instruments;

(d) any margin requirements or similar obligations, applicable to instruments of that type,

and the competent authority may specify the precise terms, or the contents, of the description of risks required under this sub-regulation.

(3) If an investment firm provides a retail client or potential retail client with information about a financial instrument that is the subject of a current offer to the public and a prospectus has been published in connection with that offer in accordance with the provisions of the Prospectuses Act 2005, that firm shall inform the client or potential client where that prospectus is made available to the public.

(4) Where the risks associated with a financial instrument composed of two or more different financial instruments or services are likely to be greater than the risks associated with any of the components, the investment firm shall provide an adequate description of the components of that instrument and the way in which its interaction increases the risks.

(5) In the case of financial instruments that incorporate a guarantee by a third party, the information about the guarantee shall include sufficient detail about the guarantor and the guarantee to enable the retail client or potential retail client to make a fair assessment of the guarantee.

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Information requirements concerning safeguarding of client financial instruments or client funds.

32.(1) Where investment firms hold financial instruments or funds belonging to retail clients, they shall provide those retail clients or potential retail clients with such of the information specified in this regulation as is relevant.

(2.) The investment firm shall inform the retail client or potential retail client where the financial instruments or funds of that client may be held by a third party on behalf of the investment firm and of the responsibility of the investment firm for any acts or omissions of the third party and the consequences for the client of the insolvency of the third party.

(3) Where financial instruments of the retail client or potential retail client are held in an omnibus account by a third party, the investment firm shall inform the client of this fact and shall provide a prominent warning of the resulting risks.

(4) The investment firm shall inform the retail client or potential retail client where client financial instruments held with a third party are not separately identifiable from the proprietary financial instruments of that third party or of the investment firm and shall provide a prominent warning of the resulting risks.

(5) The investment firm shall inform the client or potential client where accounts that contain financial instruments or funds belonging to that client or potential client are or will be subject to the law of a jurisdiction other than that of Gibraltar or another Member State and shall indicate that the rights of the client or potential client relating to those financial instruments or funds may differ accordingly.

(6) An investment firm shall inform the client about the existence and the terms of any security interest or lien which the firm has or may have over the client's financial instruments or funds, or any right of set-off it holds in relation to those instruments or funds. Where applicable, it shall also inform the client of the fact that a depository may have a security interest or lien over, or right of set-off in relation to those instruments or funds.

(7) An investment firm–

(a) before entering into securities financing transactions in relation to financial instruments held by it on behalf of a retail client; or

(b) before otherwise using such financial instruments for its own account or the account of another client,

shall in good time before the use of those instruments provide the retail client, in a durable medium, with clear, full and accurate information on the obligations and responsibilities of the investment firm with respect to the use of those financial instruments, including the terms for their restitution, and the risks involved.

Information about costs and associated charges.

33. Investment firms shall provide their retail clients and potential retail clients with information on costs and associated charges that includes such of the following elements as are relevant–

(a) the total price to be paid by the client in connection with the financial instrument or the investment service or ancillary service, including all related fees, commissions, charges and expenses, and all taxes payable via the investment firm or, if an exact price cannot be indicated, the basis for the calculation of the total price so that the client can verify it;

(b) where any part of the total price referred to in paragraph (a) is to be paid in or represents an amount of foreign currency, an indication of the currency involved and the applicable currency conversion rates and costs;

(c) notice of the possibility that other costs, including taxes, related to transactions in connection with the financial instrument or the investment service may arise for the client that are not paid via the investment firm or imposed by it;

(d) the arrangements for payment or other performance,

and for the purposes of paragraph (a), the commissions charged by the firm shall be itemised separately in every case.

Information drawn up in accordance with Directive 85/611/EEC.

34.(1) In respect of units in a collective investment undertaking covered by the Financial Services (Collective Investment Schemes) Act 2005, a prospectus appropriate for the purposes of that Act shall be regarded as appropriate information for the purposes of section 19 of the principal Act.

(2) In respect of units in a collective investment undertaking covered by the Financial Services (Collective Investment Schemes) Act 2005, a simplified prospectus complying with the provisions of that Act shall be regarded as appropriate information for the purposes of section 19 of the

principal Act with respect to the costs and associated charges related to the UCITS itself, including the exit and entry commissions.

(3) A reference in this regulation to the Financial Services (Collective Investment Schemes) Act 2005 includes a reference to legislation of substantially similar effect in respect of units in a collective investment undertaking established in a Member State other than Gibraltar.

Assessment of suitability.

35.(1) Investment firms shall obtain from clients or potential clients such information as is necessary for the firm to understand the essential facts about the client and to have a reasonable basis for believing, giving due consideration to the nature and extent of the service provided that the specific transaction to be recommended, or entered into in the course of providing a portfolio management service, satisfies the following criteria–

(a) it meets the investment objectives of the client in question;

(b) it is such that the client is able financially to bear any related investment risks consistent with his investment objectives;

(c) it is such that the client has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.

(2) Where an investment firm provides an investment service–

(a) to a professional client it shall be entitled to assume that, in relation to the products, transactions and services for which it is so classified, the client has the necessary level of experience and knowledge for the purposes of sub-regulation 1(c);

(b) consisting of the provision of investment advice to a professional client covered by Section I of Schedule 2 to the Act, the investment firm shall be entitled to assume for the purposes of sub-regulation 1(b) that the client is able financially to bear any related investment risks consistent with the investment objectives of that client.

(3) The information referred to in sub-regulation (1) regarding the financial situation of the client or potential client shall include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments.

(4) The information referred to in sub-regulation (1) regarding the investment objectives of the client or potential client shall include, where relevant, information on the length of time for which the client wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.

(5) Where, when providing the investment service of investment advice or portfolio management, an investment firm does not obtain the information required under section 19 of the Act, the firm shall not recommend investment services or financial instruments to the client or potential client.

Assessment of appropriateness.

36.(1) Investment firms, when assessing whether an investment service as referred to in section 19 of the Act is appropriate for a client, shall determine whether that client has the necessary experience and knowledge in order to understand the risks involved in relation to the product or investment service offered or demanded.

(2) For the purposes of sub-regulation (1), an investment firm shall be entitled to assume that a professional client has the necessary experience and knowledge in order to understand the risks involved in relation to those particular investment services or transactions, or types of transaction or product, for which the client is classified as a professional client.

Provisions common to the assessment of suitability or appropriateness.

37.(1) The information regarding a client's or potential client's knowledge and experience in the investment field, to the extent appropriate to the nature of the client, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved, shall include the following–

(a) the types of service, transaction and financial instrument with which the client is familiar;

(b) the nature, volume, and frequency of the client's transactions in financial instruments and the period over which they have been carried out;

(c) the level of education, and profession or relevant former profession of the client or potential client.

(2) An investment firm shall not encourage a client or potential client not to provide information required for the purposes of section 19 of the Act.

(3) An investment firm shall be entitled to rely on the information provided by its clients or potential clients unless it is aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete.

Provision of services in non-complex instruments.

38. A financial instrument which is not specified in section 19(6)(a) of the Act shall be considered as non-complex if it satisfies the following criteria–

(a) it does not fall within paragraph (c) of the definition of "transferable securities" in section 2 of, or any of paragraphs 4 to 10 of Section C in Schedule 1 to, the Act;

(b) there are frequent opportunities to dispose of, redeem, or otherwise realise that instrument at prices that are publicly available to market participants and that are either market prices or prices made available, or validated, by valuation systems independent of the issuer;

(c) it does not involve any actual or potential liability for the client that exceeds the cost of acquiring the instrument;

(d) adequately comprehensive information on its characteristics is publicly available and is likely to be readily understood so as to enable the average retail client to make an informed judgment as to whether to enter into a transaction in that instrument.

Retail client agreement.

39.(1) An investment firm that provides an investment service other than investment advice to a new retail client for the first time after the date of coming into force of these Regulations shall enter into a written basic agreement, in paper or another durable medium, with the client setting out the essential rights and obligations of the firm and the client.

(2) The rights and duties of the parties to the agreement may be incorporated by reference to other documents or legal texts.

Reporting obligations in respect of execution of orders other than for portfolio management.

40.(1) Where investment firms have carried out an order, other than for portfolio management, on behalf of a client, they shall take the following action in respect of that order–

(a) the investment firm must promptly provide the client, in a durable medium, with the essential information concerning the execution of that order;

(b) in the case of a retail client, the investment firm must send the client a notice in a durable medium confirming execution of the order as soon as possible and no later than the first business day following execution or, if the confirmation is received by the investment firm from a third party, no later than the first business day following receipt of the confirmation from the third party;

Provided that–

(i) paragraph (b) shall not apply where the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the retail client by another person; and

(ii) paragraphs (a) and (b) shall not apply where orders executed on behalf of clients relate to bonds funding mortgage loan agreements with the said clients, in which case the report on the transaction shall be made at the same time as the terms of the mortgage loan are communicated, but no later than one month after the execution of the order.

(2) In addition to the requirements under sub-regulation (1), investment firms shall supply the client, on request, with information about the status of his order.

(3) In the case of orders for a retail clients relating to units or shares in a collective investment undertaking which are executed periodically, investment firms shall either take the action specified in paragraph (b) of sub-regulation (1) or provide the retail client, at least once every six months, with the information listed in sub-regulation (4) in respect of those transactions.

(4) The notice referred to in paragraph (b) of sub-regulation (1) shall include such of the following information as is applicable and, where relevant, in accordance with Table 1 of Annex I to Regulation (EC) No 1287/2006, namely–

(a) the reporting firm identification;

(b) the name or other designation of the client;

(c) the trading day;

(d) the trading time;

(e) the type of the order;

(f) the venue identification;

(g) the instrument identification;

(h) the buy/sell indicator;

(i) the nature of the order if other than buy/sell;

(j) the quantity;

(k) the unit price;

(l) the total consideration;

(m) a total sum of the commissions and expenses charged and, where the retail client so requests, an itemised breakdown;

(n) the client's responsibilities in relation to the settlement of the transaction, including the time limit for payment or delivery as well as the appropriate account details where these details and responsibilities have not previously been notified to the client;

(o) if the client's counterparty was the investment firm itself or any person in the investment firm's group or another client of the investment firm, the fact that this was the case unless the order was executed through a trading system that facilitates anonymous trading:

Provided that for the purposes of paragraph (k), where the order is executed in tranches,–

(i) the investment firm may supply the client with information about the price of each tranche or the average price; and

(ii) where the average price is provided, the investment firm shall supply the retail client with information about the price of each tranche upon request.

(5) The investment firm may provide the client with the information referred to in sub-regulation (4) using standard codes if it also provides an explanation of the codes used.

Reporting obligations in respect of portfolio management.

41.(1) Investments firms which provide the service of portfolio management to clients shall provide each such client with a periodic statement in a durable medium of the portfolio management activities carried out on behalf of that client unless such a statement is provided by another person.

(2) In the case of retail clients, the periodic statement required under sub-regulation (1) shall include, where relevant, the following information–

(a) the name of the investment firm;

(b) the name or other designation of the retail client's account;

(c) a statement of the contents and the valuation of the portfolio, including details of each financial instrument held, its market value, or fair value if market value is unavailable and the cash balance at the beginning and at the end of the reporting period, and the performance of the portfolio during the reporting period;

(d) the total amount of fees and charges incurred during the reporting period, itemising at least total management fees and total costs associated with execution, and including, where relevant, a statement that a more detailed breakdown will be provided on request;

(e) a comparison of performance during the period covered by the statement with the investment performance benchmark (if any) agreed between the investment firm and the client;

(f) the total amount of dividends, interest and other payments received during the reporting period in relation to the client's portfolio;

(g) information about other corporate actions giving rights in relation to financial instruments held in the portfolio;

(h) for each transaction executed during the period, the information referred to in regulation 40(4)(c) to (l) where relevant, unless the client elects to receive information about executed transactions on a transaction-by-transaction basis, in which case sub-regulation (4) of this regulation shall apply.

(3) In the case of retail clients, the periodic statement referred to in sub-regulation (1) shall be provided once every six months, except in the following cases–

(a) where the client so requests, the periodic statement must be provided every three months;

(b) in cases where sub-regulation (4) applies, the periodic statement must be provided at least once every 12 months;

(c) where the agreement between an investment firm and a retail client for a portfolio management service authorises a leveraged portfolio, the periodic statement must be provided at least once a month:

Provided that–

(i) investment firms shall inform retail clients that they have the right to make requests for the purposes of paragraph (a); and

(ii) the exception provided for in paragraph (b) shall not apply in the case of transactions in financial instruments covered by paragraph (c) of the definition of "transferable securities" in section 2 of, or any of paragraphs 4 to 10 of Section C in Schedule 1 to, the Act.

(4) The following additional provisions shall apply–

(a) investment firms, in cases where the client elects to receive information about executed transactions on a transaction-by-transaction basis, shall provide promptly to the client, on the execution of a transaction by the portfolio manager, the essential information concerning that transaction in a durable medium;

(b) where the client concerned is a retail client, the investment firm must send him a notice confirming the transaction and containing the information referred to in regulation 40(4) no later than the first business day following that execution or, if the confirmation is received by the investment firm from a third party, no later than the first business day following receipt of the confirmation from the third party;

(c) paragraph (b) shall not apply where the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the retail client by another person.

Additional reporting obligations for portfolio management or contingent liability transactions.

42. Where investment firms provide portfolio management transactions for retail clients or operate retail client accounts that include an uncovered open position in a contingent liability transaction, they shall also report to the retail client any losses exceeding any predetermined threshold, agreed between the firm and the client, no later than the end of the business day in which the threshold is exceeded or, in a case where the threshold is exceeded on a non-business day, the close of the next business day.

Statements of client financial instruments or client funds.

43.(1) Investment firms that–

(a) hold client financial instruments or client funds; and

(b) are not credit institutions authorised under the Financial Services (Banking) Act in respect of deposits within the meaning of that Act held by that institution,

shall send at least once a year, to each client for whom they hold financial instruments or funds, a statement in a durable medium of those financial instruments or funds unless such a statement has been provided in any other periodic statement.

(2) The statement of client assets referred to in sub-regulation (1) shall include the following information–

(a) details of all the financial instruments or funds held by the investment firm for the client at the end of the period covered by the statement;

(b) the extent to which any client financial instruments or client funds have been the subject of securities financing transactions;

(c) the extent of any benefit that has accrued to the client by virtue of participation in any securities financing transactions, and the basis on which that benefit has accrued:

Provided that in cases where the portfolio of a client includes the proceeds of one or more unsettled transactions, the information referred to in

paragraph (a) may be based either on the trade date or the settlement date, provided that the same basis is applied consistently to all such information in the statement.

(3) Investment firms which hold financial instruments or funds and which carry out the service of portfolio management for a client shall be permitted to include the statement of client assets referred to in sub-regulation (1) in the periodic statement it provides to that client pursuant to regulation 41(1).

Best execution criteria.

44.(1) When executing client orders, investment firms shall take into account the following criteria for determining the relative importance of the factors referred to in section 21 of the Act–

(a) the characteristics of the client including the categorisation of the client as retail or professional;

(b) the characteristics of the client order;

(c) the characteristics of financial instruments that are the subject of that order;

(d) the characteristics of the execution venues to which that order can be directed.

(2) An investment firm satisfies its obligation under section 21(1) of the Act to take all reasonable steps to obtain the best possible result for a client to the extent that it executes an order or a specific aspect of an order following specific instructions from the client relating to the order or the specific aspect of the order.

(3) For the purposes of delivering best execution, where an investment firm executes an order on behalf of a retail client–

(a) the best possible result shall be determined in terms of the total consideration, representing the price of the financial instrument and the costs related to execution, which shall 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; and

(b) where there is more than one competing venue to execute an order for a financial instrument, in order to assess and compare the results for the client that would be achieved by executing

the order on each of the execution venues listed in the firm's order execution policy that is capable of executing that order, the firm's own commissions and costs for executing the order on each of the eligible execution venues shall be taken into account in that assessment.

(4) Investment firms shall not structure or charge their commissions in such a way as to discriminate unfairly between execution venues.

(5) For the purposes of this regulation and regulation 46, "execution venue" means a regulated market, an MTF, a systematic internaliser, or a market maker or other liquidity provider or an entity that performs a similar function in a third country to the functions performed by any of the foregoing.

Duty of investment firms carrying out portfolio management and reception and transmission of orders to act in the best interests of the client.

45.(1) Investment firms, when providing the service of portfolio management, shall comply with the obligation under section 19(1) of the Act to act in accordance with the best interests of their clients when placing orders with other entities for execution that result from decisions by the investment firm to deal in financial instruments on behalf of its client.

(2) Investment firms, when providing the service of reception and transmission of orders, shall comply with the obligation under section 19(1) of the Act to act in accordance with the best interests of their clients when transmitting client orders to other entities for execution.

(3) In order to comply with sub-regulations (1) or (2), investment firms shall take the actions mentioned in sub-regulations (4) to (6).

(4) Investment firms–

(a) shall take all reasonable steps to obtain the best possible result for their clients taking into account the factors referred to in section 21(1) of the Act. The relative importance of these factors shall be determined by reference to the criteria set out in regulation 44(1) and, for retail clients, to the requirement under regulation 44(3); and

(b) shall satisfy their obligations under sub-regulations (1) or (2), and are not required to take the steps mentioned in this sub-regulation, to the extent that they follow specific instructions

from clients when placing an order with, or transmitting an order to, another entity for execution.

(5) Investment firms shall establish and implement a policy–

(a) to enable them to comply with the obligation in sub-regulation (4);

(b) which shall identify, in respect of each class of instrument, the entities with which orders are placed or to which the investment firm transmits orders for execution.;

(c) which shall ensure that entities with which orders are placed have execution arrangements enabling the investment firm to comply with its obligations under this regulation when it places or transmits orders to that entity for execution; and

(d) concerning which appropriate information is supplied to clients.

(6) Investment firms–

(a) shall monitor on a regular basis the effectiveness of the policy established in accordance with sub-regulation (5) and, in particular, the execution quality of the entities identified in that policy and, where appropriate, correct any deficiencies;

(b) shall review the policy annually or whenever a material change occurs that affects the firm's ability to continue to obtain the best possible result for their clients.

(7) This regulation shall not apply when the investment firm that provides the service of portfolio management or reception and transmission of orders also executes the orders received or the decisions to deal on behalf of its client's portfolio. In those cases section 21 of the Act applies.

Execution policy.

46.(1) investment firms shall review–

(a) annually; or

(b) whenever a material change occurs that affects the firm's ability to continue to obtain the best possible result for the execution of its client orders on a consistent basis using the venues included in its execution policy,

the execution policy established pursuant to section 21(2) of the Act, as well as their order execution arrangements.

(2) Investment firms shall provide retail clients with the following details on their execution policy in good time prior to the provision of the service–

(a) an account of the relative importance the investment firm assigns, in accordance with the criteria specified in regulation 44(1), to the factors referred to in section 21(1) of the Act, or the process by which the firm determines the relative importance of those factors;

(b) a list of the execution venues on which the firm places significant reliance in meeting its obligation to take all reasonable steps to obtain on a consistent basis the best possible result for the execution of client orders;

(c) a clear and prominent warning that any specific instructions from a client may prevent the firm from taking the steps that it has designed and implemented in its execution policy to obtain the best possible result for the execution of those orders in respect of the elements covered by those instructions,

which shall be provided in a durable medium, or by means of a website (where that does not constitute a durable medium) provided that the conditions specified in regulation 3(2) are satisfied.

Client order handling: General principles.

47.(1) Investment firms shall satisfy the following conditions when carrying out client orders–

(a) they must ensure that orders executed on behalf of clients are promptly and accurately recorded and allocated;

(b) they must carry out otherwise comparable client orders sequentially and promptly unless the characteristics of the order or prevailing market conditions make this impracticable, or the interests of the client require otherwise;

(c) they must inform a retail client about any material difficulty relevant to the proper carrying out of orders promptly upon becoming aware of the difficulty.

(2) Where an investment firm is responsible for overseeing or arranging the settlement of an executed order, it shall take all reasonable steps to ensure that any client financial instruments or client funds received in settlement of that executed order are promptly and correctly delivered to the account of the appropriate client.

(3) An investment firm shall not misuse information relating to pending client orders, and shall take all reasonable steps to prevent the misuse of such information by any of its relevant persons.

Aggregation and allocation of orders.

48.(1) Investment firms shall not carry out a client order or a transaction for own account in aggregation with another client order unless the following conditions are met–

(a) it must be unlikely that the aggregation of orders and transactions will work overall to the disadvantage of any client whose order is to be aggregated;

(b) it must be disclosed to each client whose order is to be aggregated that the effect of aggregation may work to its disadvantage in relation to a particular order;

(c) an order allocation policy must be established and effectively implemented, providing in sufficiently precise terms for the fair allocation of aggregated orders and transactions, including how the volume and price of orders determines allocations and the treatment of partial executions.

(2) Where an investment firm aggregates an order with one or more other client orders and the aggregated order is partially executed, it shall allocate the related trades in accordance with its order allocation policy.

Aggregation and allocation of transactions for own account.

49.(1) Investment firms which have aggregated transactions for own account with one or more client orders shall not allocate the related trades in a way that is detrimental to a client.

(2) Subject to sub-regulation (3), where an investment firm aggregates a client order with a transaction for own account and the aggregated order is partially executed, it shall allocate the related trades to the client in priority to the firm.

(3) Where a firm is able to demonstrate on reasonable grounds that without the combination it would not have been able to carry out the order on such advantageous terms, or at all, it may allocate the transaction for own account proportionally, in accordance with its order allocation policy referred to in regulation 48(1)(c).

(4) Investment firms, as part of the order allocation policy referred to in regulation 48(1)(c), shall put in place procedures designed to prevent the reallocation, in a way that is detrimental to the client, of transactions for own account which are executed in combination with client orders.

Eligible counterparties.

50.(1) The competent authority may recognise an undertaking as an eligible counterparty if that undertaking falls within a category of clients who are to be considered professional clients in accordance with paragraphs (1), (2) and (3) of Section I of Schedule 2 to the Act, excluding any category which is explicitly mentioned in section 24(2) of that Act.

(2) On request, the competent authority may also recognise as eligible counterparties undertakings which fall within a category of clients who are to be considered professional clients in accordance with Section II of Schedule 2 to the Act. In such cases, however, the undertaking concerned shall be recognised as an eligible counterparty only in respect of the services or transactions for which it could be treated as a professional client.

(3) Where, pursuant to section 24 of the Act, an eligible counterparty requests treatment as a client whose business with an investment firm is subject to sections 19, 21 and 22 of the Act, but does not expressly request treatment as a retail client, and the investment firm agrees to that request, the firm shall treat that eligible counterparty as a professional client.

(4) Where that eligible counterparty expressly requests treatment as a retail client, the provisions in respect of requests of non-professional treatment specified in the second, third and fourth paragraphs of Section 1 of Schedule 2 to the Act shall apply.

Retention of records.

51.(1) Without prejudice to the provisions of the Limitation Act, the following provisions apply to records–

(a) investment firms shall retain all the records required under the Act, Commission Regulation (EC) No 1287/2006 as set out in the Schedule and these Regulations for a period of at least five years;

(b) records which set out the respective rights and obligations of the investment firm and the client under an agreement to provide services, or the terms on which the firm provides services to the client, shall be retained for at least the duration of the relationship with the client;

(c) the competent authority may, in exceptional circumstances, require investment firms to retain any or all of those records for such longer period as is justified by the nature of the instrument or transaction, if that is necessary to enable the authority to exercise its supervisory functions under the Act; and

(d) following the termination of the authorisation of an investment firm, the competent authority may require the firm to retain records for the outstanding term of the five year period required under the first paragraph (a).

(2) Records shall be retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority, and in such a form and manner that the following conditions are met–

(a) the competent authority must be able to access them readily and to reconstitute each key stage of the processing of each transaction;

(b) it must be possible for any corrections or other amendments, and the contents of the records prior to such corrections or amendments, to be easily ascertained;

(c) it must not be possible for the records otherwise to be manipulated or altered.

(3) The competent authority shall draw up and maintain a list of the minimum records investment firms are required to keep under this regulation.

(4) Record-keeping obligations under the Act and these Regulations are without prejudice to the right of the competent authority to impose obligations on investment firms relating to the recording of telephone conversations or electronic communications involving client orders.

Investment advice.

52.(1) For the purposes of the definition of "investment advice" in section 2(1) of the Act, a personal recommendation is a recommendation that is made to a person in his capacity as an investor or potential investor, or in his capacity as an agent for an investor or potential investor.

(2) The recommendation referred to above must be presented as suitable for that person, or must be based on a consideration of the circumstances of that person, and must constitute a recommendation to take one of the following sets of steps–

(a) to buy, sell, subscribe for, exchange, redeem, hold or underwrite a particular financial instrument;

(b) to exercise or not to exercise any right conferred by a particular financial instrument to buy, sell, subscribe for, exchange, or redeem a financial instrument.

(3) A recommendation is not a personal recommendation for the purposes of this regulation if it is issued exclusively through distribution channels or to the public.

PART IV
SUPERVISION BY THE COMPETENT AUTHORITY

Interpretation of Part.

53.(1) In this Part–

(a) "authorised officer" means the competent authority or a person authorised on the competent authority's behalf; and

(b) "relevant person" means any of the following persons–

(i) any person who is or has been a person authorised under the Act;

(ii) any person who is or was either a subsidiary or a parent controller of a person authorised under the Act or an undertaking with which such a person is or was closely linked;

(iii) any other person or body whom the competent authority believes or suspects on reasonable grounds to be carrying any business in or from within Gibraltar, or who is carrying on such business in or from within Gibraltar in

respect of which an authorisation is required pursuant to the Act;

(iv) any person who is in possession or control of any document belonging to or relating to, or any information relating to, any business carried on by a relevant person specified in any of sub-paragraphs (i) to (iii).

(2) References in this Part to functions are modified by regulation 113G of the Financial Services (Recovery and Resolution) Regulations 2014.

Power to obtain information and require the production of documents.

54.(1) An authorised officer may by notice in writing served on a relevant person–

(a) require the relevant person to provide the authorised officer, at such time or times or at such intervals or in respect of such period or periods as may be specified in the notice, with such information as the authorised officer may reasonably require for the performance of his or any other authorised officer's functions under the Act;

(b) require the relevant person to provide the authorised officer with a report by an accountant or other person with relevant professional skill on, or on any aspect of, any matter about which the authorised officer has required or could require the relevant person to provide information under paragraph (a);

and the authorised officer may require such information or report to be in such form as is specified in the notice.

(2) The accountant or other person appointed by a relevant person to make any report required under sub-regulation (1)(b) shall be a person nominated or approved by the competent authority.

(3) An authorised officer may–

(a) by notice in writing served on a relevant person require him to produce, within such time and at such place as may be specified in the notice, such document or documents of such description as may be so specified;

(b) authorise an officer, servant or agent of the competent authority (in this section referred to as an "appointee") on producing evidence of his authority, to require the relevant person to

provide the appointee forthwith with such information, or to produce to the appointee forthwith such documents as he may specify,

being such information or documents as the authorised officer may reasonably require for the performance of his or any other authorised officer's functions under the Act.

(4) Where, by virtue of sub-regulation (3), an authorised officer or any appointee has power to require the production of any documents from a relevant person, the authorised officer or appointee shall have the like power to require the production of those documents from any person who appears to be in possession of them; but where any person from whom production of any documents is required under this section claims a lien on documents produced by him, the production shall be without prejudice to the lien.

(5) Any power under this section to require a person to produce any documents includes power–

(a) if the documents are produced, to take copies of them or extracts from them and to require the person in question or, where that person is an institution, any other person who is a present or a past director, controller or manager of, or is or was at any time employed by or acting as an employee of, that institution, to provide an explanation of any of them; and

(b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(6) If it appears to an authorised officer to be desirable in the interests of the depositors or potential depositors, or consumers and businesses dealing with electronic money of a relevant person to do so, the authorised officer may also exercise the powers conferred by sub-regulations (1) and (3) in relation to any body corporate which is or has at any relevant time been–

(a) a holding company, subsidiary or related company of the relevant person;

(b) a subsidiary of a holding company of the relevant person;

(c) a holding company of a subsidiary of the relevant person; or

(d) an undertaking which is closely linked with the relevant person;

or in relation to a partnership of which the relevant person is or has at any relevant time been a member.

(7) An authorised officer may by notice in writing served on any person who is or is to be a director, controller or manager of an institution which is a relevant person require him to provide the authorised officer, within such time as may be specified in the notice, with such information or documents as the authorised officer may reasonably require for determining whether he is a fit and proper person to hold the position which he holds or is to hold.

(8) A statement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him.

(9) This regulation is modified by regulation 113G of the Financial Services (Recovery and Resolution) Regulations 2014.

Application of regulation 54 in relation to home competent authorities.

55.(1) An authorised officer may exercise the powers conferred by regulation 54 for the purpose of assisting an institution's home competent authority in the performance of any material supervisory functions; and an authorised officer shall exercise those powers in any case where such an officer is requested to do so by that authority and is satisfied that the request is made for that purpose.

(2) Subject to subsection (3) any reference in regulation 54(1)(a) to an authorised officer includes a reference to an officer or agent of the relevant home competent authority.

(3) Powers under regulation 54 shall not be exercised by an officer or agent of the relevant competent authority unless a proper request has previously been communicated by that home competent authority to the competent authority.

(4) For the purposes of this section the material supervisory functions of the relevant home competent authority are–

(a) any functions which correspond to those of the competent authority under the Act; and

(b) any other functions which the home competent authority has in respect of the activities of the institution and in respect of which, by virtue of any community obligation, the competent authority may be required to provide information.

(5) This regulation is modified by regulation 113G of the Financial Services (Recovery and Resolution) Regulations 2014.

Inspections.

56.(1) An authorised officer may for the purposes of the prudential supervision of any person authorised under the Act–

(a) inspect the premises and the business of a relevant person specified in paragraph (b) of regulation 53; and

(b) require any person appearing to him to be or at any time to have been a director, controller, manager, or agent of that relevant person to produce to the authorised officer any documents, accounts, and other records that are in that person's possession or control and relate to the business of that relevant person; and

(c) examine, make copies of, or retain for the purposes of the Act any documents, accounts or other records referred to in paragraph (b); and

(d) require any person referred to in paragraph (b) to explain to the authorised officer any matter within his knowledge or belief that relates to the business of the relevant person.

(2) In the case of an institution of the Community, an authorised officer may exercise the powers conferred by this regulation for the purpose of assisting the institution in the performance of any function corresponding to those of the competent authority under the Act and an authorised officer shall exercise those powers in any case where such an officer is requested to do so by the institution and is satisfied that the request is made for that purpose.

(3) The reference in sub-regulation (1) to an authorised officer shall include a reference to an officer or agent of the relevant supervisory authority of any EEA State and the reference in that subsection to powers of inspection, production, examination and access shall be similarly restricted by the limitations imposed under regulation 55.

(4) This regulation is modified by regulation 113G of the Financial Services (Recovery and Resolution) Regulations 2014.

Directions.

57.(l) Where–

(a) an authorised person makes any report orally or in writing to the competent authority; or

(b) the competent authority believes or suspects on reasonable grounds that the authorised person is likely to be unable to meet any liability or obligation by it to any one or more persons, or is about to suspend any payment due to any person; or

(c) an authorised person is unable to meet a liability or obligation by it to any one or more persons or does suspend any payment due to any person; or

(d) the competent authority believes or suspects on reasonable grounds that an authorised person–

(i) has contravened any one or more provisions of the Act or any one or more conditions of his authorisation; or

(ii) is carrying on its business in a manner detrimental to the interests of his clients or creditors or any class of clients or creditors; or

(e) the competent authority considers that it is in the public interest to do so,

the competent authority may by notice in writing served on the authorised person direct it, at its own expense, to take or refrain from taking any course of action in relation to the conduct of its business that the competent authority specifies in the notice, which notice shall give details of the rights of appeal conferred by the Act.

(2) In particular, but without limitation of the generality of sub-regulation (1), in a notice served under that sub-regulation the competent authority may direct an authorised person, at his own expense–

(a) to appoint and retain an auditor approved by the competent authority in respect of the business authorised by his licence; and

(b) to have his accounts duly audited by such an auditor and to submit the audited accounts together with the auditor's report on those accounts to the competent authority; and

(c) to appoint a competent person to advise the licensee on its business or on any specified aspects of its business.

(3) The competent authority may from time to time revoke or vary a direction given under this section in the same manner as it was given.

(4) Where an authorised person fails to comply with a notice served on it under this regulation directing it to appoint any person specified in either paragraphs (a) or (c) of sub-regulation (2), the competent authority may, as the agent of the authorised person, make such an appointment on such terms and conditions as he thinks fit, and the authorised person shall he bound to the person so appointed on the terms and conditions so determined by the competent authority.

(5) In the winding up of an authorised person in respect of whom any person has been appointed under either sub-regulations (2) or (3), the fees payable by the licensee to that person shall rank as a preferential debt equally with any other debts that are first charges on the assets of the licensee.

Investigations on behalf of the competent authority.

58.(1) If it appears to the competent authority desirable to do so in the interests of any client of an authorised person or in order to safeguard the reputation of Gibraltar, he may appoint one or more persons to investigate and report to the competent authority on–

(a) the nature, conduct or state of the authorised person's business or any particular aspect of it; or

(b) the ownership or control of the body (in cases where the authorised person is not an individual),

and the competent authority shall give written notice of the appointment to the authorised person concerned.

(2) The competent authority may also request a person or persons appointed under sub-regulation (1), if it considers it to be appropriate, to further investigate any holding company, subsidiary or related company of a licensee under investigation or any further holding company, subsidiary or related company of that person.

(3) For the purposes of an investigation commissioned under this regulation a person or persons appointed under sub-regulation (1) shall be regarded as an authorised person for the purposes of exercising all or any of the powers conferred under the Act.

(4) A statement made by a person in compliance with a requirement imposed by virtue of this Part may be used in evidence against them.

(5) A person or persons appointed under sub-regulation (1) shall be regarded as an officer or servant of the competent authority for the purposes of the Act.

PART V
FINAL PROVISIONS

Relation to other legislation.

59. Nothing in the Financial Services (Conduct of Business) Regulations, 1991 or the Financial Services (Conduct of Business in the United Kingdom) Regulations 2006 shall affect the operation of the present Regulations.

Section 61 of the Act: Prescription of date.

60. The date prescribed for the purposes of section 61 of the Act is 1 November 2007.

Offences.

61.(1) It shall be an offence for any person to be responsible for any act or omission contrary to the provisions of the Act, Commission Regulation (EC) No 1287/2006 as set out in the Schedule or these Regulations.

(2) Any person found guilty of an offence contrary to sub-regulation (1) shall be punishable on summary conviction by a fine not exceeding level 5 on the standard scale.

(3) The competent authority may take into account any offence committed contrary to sub-regulation (1) when deciding whether to grant, renew, revoke or suspend any permit, licence or authorisation to the person responsible for the offence and material to the facts giving rise to the offence.

(4) Nothing in this regulation applies to the competent authority.

Schedule.

62. The Schedule (which, for reference purposes only, sets out the provisions of Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and

of the Council as regards recordkeeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive) shall have effect.

FINANCIAL SERVICES (MARKETS IN FINANCIAL INSTRUMENTS) REGULATIONS 2007

SCHEDULE

Regulation 62

COMMISSION REGULATION (EC) No 1287/2006

Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive (Text with EEA relevance) Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive (Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, and in particular Articles 4(1)(2), 4(1)(7) and 4(2), Article 13(10), Article 25(7), Article 27(7), Article 28(3), Article 29(3), Article 30(3), Article 40(6), Article 44(3), Article 45(3), Article 56(5), and Article 58(4) thereof,

Whereas:

(1) Directive 2004/39/EC establishes the general framework for a regulatory regime for financial markets in the Community, setting out, among other matters: operating conditions relating to the performance by investment firms of investment and ancillary services, and investment activities; organisational requirements (including record-keeping obligations) for investment firms performing such services and activities on a professional basis, and for regulated markets; transaction reporting requirements in respect of transactions in financial instruments, and transparency requirements in respect of transactions in shares.

(2) It is appropriate that the provisions of this Regulation take that legislative form in order to ensure a harmonised regime in all Member States, to promote market integration and the cross-border provision of

investment and ancillary services, and to facilitate the further consolidation of the single market. Provisions relating to certain aspects of record-keeping, and to transaction reporting, transparency and commodity derivatives have few interfaces with national law and with detailed laws governing client relationships.

(3) Detailed and fully harmonised transparency requirements and rules regulating transaction reporting are appropriate so as to ensure equivalent market conditions and the smooth operation of securities markets throughout the Community, and to facilitate the effective integration of those markets. Certain aspects of record-keeping are closely allied as they make use of the same concepts as are defined for transaction reporting and transparency purposes.

(4) The regime established by Directive 2004/39/EC governing transaction reporting requirements in respect of transactions in financial instruments aims to ensure that relevant competent authorities are properly informed about transactions in which they have a supervisory interest. For those purposes it is necessary to ensure that a single data set is collected from all investment firms with a minimum of variation between Member States, so as to minimise the extent to which businesses operating across borders are subject to different reporting obligations, and so as to maximise the proportion of data held by a competent authority that can be shared with other competent authorities. The measures are also designed to ensure that competent authorities are in a position to carry out their obligations under that Directive as expeditiously and efficiently as possible.

(5) The regime established by Directive 2004/39/EC governing transparency requirements in respect of transactions in shares admitted to trading on a regulated market aims to ensure that investors are adequately informed as to the true level of actual and potential transactions in such shares, whether those transactions take place on regulated markets, multilateral trading facilities, hereinafter "MTFs", systematic internalisers, or outside those trading venues. Those requirements are part of a broader framework of rules designed to promote competition between trading venues for execution services so as to increase investor choice, encourage innovation, lower transaction costs, and increase the efficiency of the price formation process on a pan-Community basis. A high degree of transparency is an essential part of this framework, so as to ensure a level playing field between trading venues so that the price discovery mechanism in respect of particular shares is not impaired by the fragmentation of liquidity, and investors are not thereby penalised. On the other hand, that Directive recognises that there may be circumstances where exemptions from pre-trade transparency obligations, or deferral of post-trade transparency obligations, may be necessary. This Regulation sets out details of those circumstances, bearing in mind the need both to ensure a high level of

transparency, and to ensure that liquidity on trading venues and elsewhere is not impaired as an unintended consequence of obligations to disclose transactions and thereby to make public risk positions.

(6) For the purposes of the provisions on record-keeping, a reference to the type of the order should be understood as referring to its status as a limit order, market order, or other specific type of order. For the purposes of the provisions on record-keeping, a reference to the nature of the order or transaction should be understood as referring to orders to subscribe for securities or the subscription of securities, or to exercise an option or the exercise of an option, or similar client orders or transactions.

(7) It is not necessary at this stage to specify or prescribe in detail the type, nature and sophistication of the arrangements for the exchange of information between competent authorities.

(8) Where a notification made by a competent authority relating to the alternative determination of the most relevant market in terms of liquidity is not acted upon within a reasonable time, or where a competent authority does not agree with the calculation made by the other authority, the competent authorities concerned should seek to find a solution. It is open to the competent authorities, where appropriate, to discuss the matter in the Committee of European Securities Regulators.

(9) The competent authorities should coordinate the design and establishment of arrangements for the exchange of transaction information between themselves. Again it is open to the competent authorities to discuss those matters in the Committee of European Securities Regulators. Competent authorities should report to the Commission which should inform the European Securities Committee of those arrangements. In carrying out the coordination, competent authorities should consider the need to monitor the activities of investment firms effectively, so as to ensure that they act honestly, fairly and professionally and in a manner which promotes the integrity of the market in the Community, the need for decisions to be based on a thorough cost-benefit analysis, the need to ensure that transaction information is used only for the proper discharge of the functions of competent authorities and finally the need to have effective and accountable governance arrangements for any common system that might be considered necessary.

(10) It is appropriate to set the criteria for determining when the operations of a regulated market are of substantial importance in a host Member State and the consequences of that status in such a way as to avoid creating an obligation on a regulated market to deal with or be made subject to more than one competent authority where otherwise there would be no such obligation.

(11) ISO 10962 (Classification of financial instruments code) is an example of a uniform internationally accepted standard for financial instrument classification.

(12) If granting waivers in relation to pre-trade transparency requirements, or authorising the deferral of post-trade transparency obligations, competent authorities should treat all regulated markets and MTFs equally and in a non-discriminatory manner, so that a waiver or deferral is granted either to all regulated markets and MTFs that they authorise under Directive 2004/39/EC, or to none. Competent authorities which grant the waivers or deferrals should not impose additional requirements.

(13) It is appropriate to consider that a trading algorithm operated by a regulated market or MTF usually should seek to maximise the volume traded, but other trading algorithms should be possible.

(14) A waiver from pre-trade transparency obligations arising under Articles 29 or 44 of Directive 2004/39/EC conferred by a competent authority should not enable investment firms to avoid such obligations in respect of those transactions in liquid shares which they conclude on a bilateral basis under the rules of a regulated market or an MTF where, if carried out outside the rules of the regulated market or MTF, those transactions would be subject to the requirements to publish quotes set out in Article 27 of that Directive.

(15) An activity should be considered as having a material commercial role for an investment firm if the activity is a significant source of revenue, or a significant source of cost. An assessment of significance for these purposes should, in every case, take into account the extent to which the activity is conducted or organised separately, the monetary value of the activity, and its comparative significance by reference both to the overall business of the firm and to its overall activity in the market for the share concerned in which the firm operates. It should be possible to consider an activity to be a significant source of revenue for a firm even if only one or two of the factors mentioned is relevant in a particular case.

(16) Shares not traded daily should not be considered as having a liquid market for the purposes of Directive 2004/39/EC. However, if, for exceptional reasons, trading in a share is suspended for reasons related to the preservation of an orderly market or force majeure and therefore a share is not traded during some trading days, this should not mean that the share cannot be considered to have a liquid market.

(17) The requirement to make certain quotes, orders or transactions public pursuant to Articles 27, 28, 29, 30, 44 and 45 of Directive 2004/39/EC and

this Regulation should not prevent regulated markets and MTFs from requiring their members or participants to make public other such information.

(18) Information which is required to be made available as close to real time as possible should be made available as close to instantaneously as technically possible, assuming a reasonable level of efficiency and of expenditure on systems on the part of the person concerned. The information should only be published close to the three minute maximum limit in exceptional cases where the systems available do not allow for a publication in a shorter period of time.

(19) For the purposes of the provisions of this Regulation as to the admission to trading on a regulated market of a transferable security as defined in Article 4(1)(18)(c) of Directive 2004/39/EC, in the case of a security within the meaning of Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC, there should be considered to be sufficient information publicly available of a kind needed to value that financial instrument.

(20) The admission to trading on a regulated market of units issued by undertakings for collective investment in transferable securities should not allow the avoidance of the relevant provisions of Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), and in particular Articles 44 to 48 of that Directive.

(21) A derivative contract should only be considered to be a financial instrument under Section C(7) of Annex I to Directive 2004/39/EC if it relates to a commodity and meets the criteria in this Regulation for determining whether a contract should be considered as having the characteristics of other derivative financial instruments and as not being for commercial purposes. A derivative contract should only be considered to be a financial instrument under Section C(10) of that Annex if it relates to an underlying specified in Section C(10) or in this Regulation and meets the criteria in this Regulation for determining whether it should be considered as having the characteristics of other derivative financial instruments.

(22) The exemptions in Directive 2004/39/EC that relate to dealing on own account or to dealing or providing other investment services in relation to commodity derivatives covered by Sections C(5), C(6) and C(7) of Annex I to that Directive or derivatives covered by Section C(10) of that Annex I could be expected to exclude significant numbers of commercial producers

and consumers of energy and other commodities, including energy suppliers, commodity merchants and their subsidiaries from the scope of that Directive, and therefore such participants will not be required to apply the tests in this Regulation to determine if the contracts they deal in are financial instruments.

(23) In accordance with Section B(7) of Annex I to Directive 2004/39/EC, investment firms may exercise the freedom to provide ancillary services in a Member State other than their home Member State, by performing investment services and activities and ancillary services of the type included under Section A or B of that Annex related to the underlying of the derivatives included under Sections C(5), (6), (7) and (10) of that Annex, where these are connected to the provision of investment or ancillary services. On this basis, a firm performing investment services or activities, and connected trading in spot contracts, should be capable to take advantage of the freedom to provide ancillary services in respect of that connected trading.

(24) The definition of a commodity should not affect any other definition of that term in national legislation and other community legislation. The tests for determining whether a contract should be considered as having the characteristics of other derivative financial instruments and not being for commercial purposes are only intended to be used for the purposes of determining whether contracts fall within Section C(7) or C(10) of Annex I to Directive 2004/39/EC.

(25) A derivative contract should be understood as relating to a commodity or to another factor where there is a direct link between that contract and the relevant underlying commodity or factor. A derivative contract on the price of a commodity should therefore be regarded as a derivative contract relating to the commodity, while a derivative contract on the transportation costs for the commodity should not be regarded as a derivative contract relating to the commodity. A derivative that relates to a commodity derivative, such as an option on a commodity future (a derivative relating to a derivative) would constitute an indirect investment in commodities and should therefore still be regarded as a commodity derivative for the purposes of Directive 2004/39/EC.

(26) The concept of commodity should not include services or other items that are not goods, such as currencies or rights in real estate, or that are entirely intangible.

(27) The Committee of European Securities Regulators, established by Commission Decision 2001/527/EC has been consulted for technical advice.

(28) The measures provided for in this Regulation are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL

Article 1

Subject-matter and scope.

1. This Regulation lays down the detailed rules for the implementation of Articles 4(1)(2), 4(1)(7), 13(6), 25, 27, 28, 29, 30, 40, 44, 45, 56 and 58 of Directive 2004/39/EC.

2. Articles 7 and 8 shall apply to management companies in accordance with Article 5(4) of Directive 85/611/EEC.

Article 2

Definitions.

For the purposes of this Regulation, the following definitions shall apply:

(1) “commodity” means any goods of a fungible nature that are capable of being delivered, including metals and their ores and alloys, agricultural products, and energy such as electricity;

(2) “issuer” means an entity which issues transferable securities and, where appropriate, other financial instruments;

(3) “Community issuer” means an issuer which has its registered office in the Community;

(4) “third country issuer” means an issuer which is not a Community issuer;

(5) “normal trading hours” for a trading venue or an investment firm means those hours which the trading venue or investment firm establishes in advance and makes public as its trading hours;

(6) “portfolio trade” means a transaction in more than one security where those securities are grouped and traded as a single lot against a specific reference price;

(7) "relevant competent authority" for a financial instrument means the competent authority of the most relevant market in terms of liquidity for that financial instrument;

(8) "trading venue" means a regulated market, MTF or systematic internaliser acting in its capacity as such, and, where appropriate, a system outside the Community with similar functions to a regulated market or MTF;

(9) "turnover", in relation to a financial instrument, means the sum of the results of multiplying the number of units of that instrument exchanged between buyers and sellers in a defined period of time, pursuant to transactions taking place on a trading venue or otherwise, by the unit price applicable to each such transaction;

(10) "securities financing transaction" means an instance of stock lending or stock borrowing or the lending or borrowing of other financial instruments, a repurchase or reverse repurchase transaction, or a buy-sell back or sell-buy back transaction.

Article 3

Transactions related to an individual share in a portfolio trade and volume weighted average price transactions.

1. A transaction related to an individual share in a portfolio trade shall be considered, for the purposes of Article 18(1)(b)(ii), as a transaction subject to conditions other than the current market price.

It shall also be considered, for the purposes of Article 27(1)(b), as a transaction where the exchange of shares is determined by factors other than the current market valuation of the share.

2. A volume weighted average price transaction shall be considered, for the purposes of Article 18(1)(b)(ii), as a transaction subject to conditions other than the current market price and, for the purposes of Article 25, as an order subject to conditions other than the current market price.

It shall also be considered, for the purposes of Article 27(1)(b), as a transaction where the exchange of shares is determined by factors other than the current market valuation of the share.

Article 4

References to trading day.

1. A reference to a trading day in relation to a trading venue, or in relation to post-trade information to be made public under Article 30 or 45 of Directive 2004/39/EC in relation to a share, shall be a reference to any day during which the trading venue concerned is open for trading.

A reference to the opening of the trading day shall be a reference to the commencement of the normal trading hours of the trading venue.

A reference to noon on the trading day shall be a reference to noon in the time zone where the trading venue is established.

A reference to the end of the trading day shall be a reference to the end of its normal trading hours.

2. A reference to a trading day in relation to the most relevant market in terms of liquidity for a share, or in relation to post-trade information to be made public under Article 28 of Directive 2004/39/EC in relation to a share, shall be a reference to any day of normal trading on trading venues in that market.

A reference to the opening of the trading day shall be a reference to the earliest commencement of normal trading in that share on trading venues in that market.

A reference to noon on the trading day shall be a reference to noon in the time zone of that market.

A reference to the end of the trading day shall be a reference to the latest cessation of normal trading in that share on trading venues in that market.

3. A reference to a trading day in relation to a spot contract, within the meaning of Article 38(2), shall be a reference to any day of normal trading of that contract on trading venues.

Article 5

References to transaction.

For the purposes of this Regulation, a reference to a transaction is a reference only to the purchase and sale of a financial instrument. For the purposes of this Regulation, other than Chapter II, the purchase and sale of a financial instrument does not include any of the following:

(a) securities financing transactions;

(b) the exercise of options or of covered warrants;

(c) primary market transactions (such as issuance, allotment or subscription) in financial instruments falling within Article 4(1)(18)(a) and (b) of Directive 2004/39/EC.

Article 6

First admission to trading of a share on a regulated market.

For the purposes of this Regulation, the first admission to trading of a share on a regulated market referred to in Article 40 of Directive 2004/39/EC shall be considered to take place at a time when one of the following conditions applies:

(a) the share has not previously been admitted to trading on a regulated market;

(b) the share has previously been admitted to trading on a regulated market but the share is removed from trading on every regulated market which has so admitted it.

CHAPTER II

RECORD-KEEPING: CLIENT ORDERS AND TRANSACTIONS

Article 7

(Article 13(6) of Directive 2004/39/EC) Record-keeping of client orders and decisions to deal.

An investment firm shall, in relation to every order received from a client, and in relation to every decision to deal taken in providing the service of portfolio management, immediately make a record of the following details, to the extent they are applicable to the order or decision to deal in question:

(a) the name or other designation of the client;

(b) the name or other designation of any relevant person acting on behalf of the client;

(c) the details specified in paragraphs 4, 6 and 16 to 19, of Table 1 of Annex I;

(d) the nature of the order if other than buy or sell;

(e) the type of the order;

(f) any other details, conditions and particular instructions from the client that specify how the order must be carried out;

(g) the date and exact time of the receipt of the order, or of the decision to deal, by the investment firm.

Article 8

(Article 13(6) of Directive 2004/39/EC) Record-keeping of transactions.

1. Immediately after executing a client order, or, in the case of investment firms that transmit orders to another person for execution, immediately after receiving confirmation that an order has been executed, investment firms shall record the following details of the transaction in question:

(a) the name or other designation of the client;

(b) the details specified in paragraphs 2, 3, 4, 6 and 16 to 21, of Table 1 of Annex I;

(c) the total price, being the product of the unit price and the quantity;

(d) the nature of the transaction if other than buy or sell;

(e) the natural person who executed the transaction or who is responsible for the execution.

2. If an investment firm transmits an order to another person for execution, the investment firm shall immediately record the following details after making the transmission:

(a) the name or other designation of the client whose order has been transmitted;

(b) the name or other designation of the person to whom the order was transmitted;

(c) the terms of the order transmitted;

(d) the date and exact time of transmission.

CHAPTER III

TRANSACTION REPORTING

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Article 9

(Second subparagraph of Article 25(3) of Directive 2004/39/EC) Determination of the most relevant market in terms of liquidity.

1. The most relevant market in terms of liquidity for a financial instrument which is admitted to trading on a regulated market, hereinafter "the most relevant market", shall be determined in accordance with paragraphs 2 to 8.

2. In the case of a share or other transferable security covered by Article 4(1)(18)(a) of Directive 2004/39/EC or of a unit in a collective investment undertaking, the most relevant market shall be the Member State where the share or the unit was first admitted to trading on a regulated market.

3. In the case of a bond or other transferable security covered by Article 4(1)(18)(b) of Directive 2004/39/EC or of a money market instrument which, in either case, is issued by a subsidiary, within the meaning of Seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts [5], of an entity which has its registered office in a Member State, the most relevant market shall be the Member State where the registered office of the parent entity is situated.

4. In the case of a bond or other transferable security covered by Article 4(1)(18)(b) of Directive 2004/39/EC or of a money market instrument which, in either case, is issued by a Community issuer and which is not covered by paragraph 3 of this Article, the most relevant market shall be the Member State where the registered office of the issuer is situated.

5. In the case of a bond or other transferable security covered by Article 4(1)(18)(b) of Directive 2004/39/EC or a money market instrument which, in either case, is issued by a third country issuer and which is not covered by paragraph 3 of this Article, the most relevant market shall be the Member State where that security was first admitted to trading on a regulated market.

6. In the case of a derivative contract or a financial contract for differences or a transferable security covered by Article 4(1)(18)(c) of Directive 2004/39/EC, the most relevant market shall be:

(a) where the underlying security is a share or other transferable security covered by Article 4(1)(18)(a) of Directive 2004/39/EC which is admitted to trading on a regulated market, the Member State deemed to be the most relevant market in terms of liquidity for the underlying security, in accordance with paragraph 2;

(b) where the underlying security is a bond or other transferable security covered by Article 4(1)(18)(b) of Directive 2004/39/EC or a money market instrument which is admitted to trading on a regulated market, the Member State deemed to be the most relevant market in terms of liquidity for that underlying security, in accordance with paragraphs 3, 4 or 5;

(c) where the underlying is an index composed of shares all of which are traded on a particular regulated market, the Member State where that regulated market is situated.

7. In any case not covered by paragraphs 2 to 6, the most relevant market shall be the Member State where the regulated market that first admitted the transferable security or derivative contract or financial contract for differences to trading is located.

8. Where a financial instrument covered by paragraphs 2, 5 or 7, or the underlying financial instrument of a financial instrument covered by paragraph 6 to which one of paragraphs 2, 5 or 7 is relevant, was first admitted to trading on more than one regulated market simultaneously, and all those regulated markets share the same home Member State, that Member State shall be the most relevant market.

Where the regulated markets concerned do not share the same home Member State, the most relevant market in terms of liquidity for that instrument shall be the market where the turnover of that instrument is highest.

For the purposes of determining the most relevant market where the turnover of the instrument is highest, each competent authority that has authorised one of the regulated markets concerned shall calculate the turnover for that instrument in its respective market for the previous calendar year, provided that the instrument was admitted to trading at the beginning of that year.

Where the turnover for the relevant financial instrument cannot be calculated by reason of insufficient or non-existent data and the issuer has its registered office in a Member State, the most relevant market shall be the market of the Member State where the registered office of the issuer is situated.

However, where issuer does not have its registered office in a Member State, the most relevant market for that instrument shall be the market where the turnover of the relevant instrument class is the highest. For the purposes of determining that market, each competent authority that has authorised one of the regulated markets concerned shall calculate the turnover for the

instruments of the same class in its respective market for the preceding calendar year.

The relevant classes of financial instrument are the following:

(a) shares;

(b) bonds or other forms of securitised debt;

(c) any other financial instruments.

Article 10

(Second subparagraph of Article 25(3) of Directive 2004/39/EC) Alternative determination of most relevant market in terms of liquidity.

1. A competent authority may, in January every year, notify the relevant competent authority for a particular financial instrument that it intends to contest the determination, made in accordance with Article 9, of the most relevant market for that instrument.

2. Within four weeks of the sending of the notification, both authorities shall calculate the turnover for that financial instrument in their respective markets over the period of the previous calendar year.

If the results of that calculation indicate that the turnover is higher in the market of the contesting competent authority, that market shall be the most relevant market for that financial instrument. Where that financial instrument is of a type specified in Article 9(6)(a) or (b), that market shall also be the most relevant market for any derivative contract or financial contract for differences or transferable security which is covered by Article 4(1)(18)(c) of Directive 2004/39/EC and in respect of which that financial instrument is the underlying.

Article 11

(Article 25(3) of Directive 2004/39/EC) List of financial instruments.

The relevant competent authority for one or more financial instruments shall ensure that there is established and maintained an updated list of those financial instruments. That list shall be made available to the single competent authority designated as a contact paragraph by each Member State in accordance with Article 56 of Directive 2004/39/EC. That list shall be made available for the first time on the first trading day in June 2007.

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In order to assist competent authorities to comply with the first subparagraph, each regulated market shall submit identifying reference data on each financial instrument admitted to trading in an electronic and standardised format to its home competent authority. This information shall be submitted for each financial instrument before trading commences in that particular instrument. The home competent authority shall ensure the data is transmitted to the relevant competent authority for the financial instrument concerned. The reference data shall be updated whenever there are changes to the data with respect to an instrument. The requirements in this subparagraph may be waived if the relevant competent authority for that financial instrument obtains the relevant reference data by other means.

Article 12

(Article 25(5) of Directive 2004/39/EC) Reporting channels.

1. The reports of transactions in financial instruments shall be made in an electronic form except under exceptional circumstances, when they may be made in a medium which allows for the storing of the information in a way accessible for future reference by the competent authorities other than an electronic form, and the methods by which those reports are made shall satisfy the following conditions:

(a) they ensure the security and confidentiality of the data reported;

(b) they incorporate mechanisms for identifying and correcting errors in a transaction report;

(c) they incorporate mechanisms for authenticating the source of the transaction report;

(d) they include appropriate precautionary measures to enable the timely resumption of reporting in the case of system failure;

(e) they are capable of reporting the information required under Article 13 in the format required by the competent authority and in accordance with this paragraph, within the time limits set out in Article 25(3) of Directive 2004/39/EC.

2. A trade-matching or reporting system shall be approved by the competent authority for the purposes of Article 25(5) of Directive 2004/39/EC if the arrangements for reporting transactions established by that system comply with paragraph 1 of this Article and are subject to monitoring by a competent authority in respect of their continuing compliance.

Article 13

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(Article 25(3) and (5) of Directive 2004/39/EC) Content of the transaction report.

1. The reports of transactions referred to in Article 25(3) and (5) of Directive 2004/39/EC shall contain the information specified in Table 1 of Annex I to this Regulation which is relevant to the type of financial instrument in question and which the competent authority declares is not already in its possession or is not available to it by other means.

2. For the purposes of the identification of a counterparty to the transaction which is a regulated market, an MTF or other central counterparty, as specified in Table 1 of Annex I, each competent authority shall make publicly available a list of identification codes of the regulated markets and MTFs for which, in each case, it is the competent authority of the home Member State, and of any entities which act as central counterparties for such regulated markets and MTFs.

3. Member States may require reports made in accordance with Article 25(3) and (5) of Directive 2004/39/EC to contain information related to the transactions in question which is additional to that specified in Table 1 of Annex I where that information is necessary to enable the competent authority to monitor the activities of investment firms to ensure that they act honestly, fairly and professionally and in a manner that promotes the integrity of the market, and provided that one of the following criteria is met:

(a) the financial instrument which is the subject of the report has characteristics which are specific to an instrument of that kind and which are not covered by the information items specified in that table;

(b) trading methods which are specific to the trading venue where the transaction took place involve features which are not covered by the information items specified in that table.

4. Member States may also require a report of a transaction made in accordance with Article 25(3) and (5) of Directive 2004/39/EC to identify the clients on whose behalf the investment firm has executed that transaction.

Article 14

(Article 25(3) and (5) of Directive 2004/39/EC) Exchange of information on transactions.

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1. The competent authorities shall establish arrangements designed to ensure that the information received in accordance with Article 25(3) and (5) of Directive 2004/39/EC is made available to the following:

(a) the relevant competent authority for the financial instrument in question;

(b) in the case of branches, the competent authority that has authorised the investment firm providing the information, without prejudice to its right not to receive this information in accordance with Article 25(6) of Directive 2004/39/EC;

(c) any other competent authority that requests the information for the proper discharge of its supervisory duties under Article 25(1) of Directive 2004/39/EC.

2. The information to be made available in accordance with paragraph 1 shall contain the information items described in Tables 1 and 2 of Annex I.

3. The information referred to in paragraph 1 shall be made available as soon as possible.

With effect from 1 November 2008 that information shall be made available no later than the close of the next working day of the competent authority that received the information or the request following the day on which the competent authority has received the information or the request.

4. The competent authorities shall coordinate the following:

(a) the design and establishment of arrangements for the exchange of transaction information between the competent authorities as required by Directive 2004/39/EC and this Regulation;

(b) any future upgrading of the arrangements.

5. Before 1 February 2007, the competent authorities shall report to the Commission, which shall inform the European Securities Committee, on the design of the arrangements to be established in accordance with paragraph 1.

They shall also report to the Commission, which shall inform the European Securities Committee, whenever significant changes to those arrangements are proposed.

Article 15

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(Article 58(1) of Directive 2004/39/EC) Request for cooperation and exchange of information.

1. Where a competent authority wishes another competent authority to supply or exchange information in accordance with Article 58(1) of Directive 2004/39/EC, it shall submit a written request to that competent authority containing sufficient detail to enable it to provide the information requested.

However, in a case of urgency, the request may be transmitted orally provided that it is confirmed in writing. The competent authority which receives a request shall acknowledge receipt as soon as practicable.

2. Where the information requested under paragraph 1 is internally available to the competent authority that receives the request, that authority shall transmit the requested information without delay to the competent authority which made the request.

However, if the competent authority that receives the request does not possess or control the information requested, it shall immediately take the necessary steps to obtain that information and to comply fully with the request. That competent authority shall also inform the competent authority that made the request of the reasons for not sending immediately the information requested.

Article 16

(Article 56(2) of Directive 2004/39/EC) Determination of the substantial importance of a regulated market's operations in a host Member State.

The operations of a regulated market in a host Member State shall be considered to be of substantial importance for the functioning of the securities markets and the protection of investors in that host State where one of the following criteria is met:

(a) the host Member State has formerly been the home Member State of the regulated market in question;

(b) the regulated market in question has acquired through merger, takeover, or any other form of transfer the business of a regulated market which had its registered office or head office in the host Member State.

CHAPTER IV

MARKET TRANSPARENCY

FINANCIAL SERVICES (MARKETS IN FINANCIAL INSTRUMENTS) REGULATIONS 2007

SECTION 1

Pre-trade transparency for regulated markets and MTFs

Article 17

(Articles 29 and 44 of Directive 2004/39/EC) Pre-trade transparency obligations.

1. An investment firm or market operator operating an MTF or a regulated market shall, in respect of each share admitted to trading on a regulated market that is traded within a system operated by it and specified in Table 1 of Annex II, make public the information set out in paragraphs 2 to 6.

2. Where one of the entities referred to in paragraph 1 operates a continuous auction order book trading system, it shall, for each share as specified in paragraph 1, make public continuously throughout its normal trading hours the aggregate number of orders and of the shares those orders represent at each price level, for the five best bid and offer price levels.

3. Where one of the entities referred to in paragraph 1 operates a quote-driven trading system, it shall, for each share as specified in paragraph 1, make public continuously throughout its normal trading hours the best bid and offer by price of each market maker in that share, together with the volumes attaching to those prices.

The quotes made public shall be those that represent binding commitments to buy and sell the shares and which indicate the price and volume of shares in which the registered market makers are prepared to buy or sell.

In exceptional market conditions, however, indicative or one-way prices may be allowed for a limited time.

4. Where one of the entities referred to in paragraph 1 operates a periodic auction trading system, it shall, for each share specified in paragraph 1, make public continuously throughout its normal trading hours the price that would best satisfy the system's trading algorithm and the volume that would potentially be executable at that price by participants in that system.

5. Where one of the entities referred to in paragraph 1 operates a trading system which is not wholly covered by paragraph 2 or 3 or 4, either because it is a hybrid system falling under more than one of those paragraphs or because the price determination process is of a different nature, it shall maintain a standard of pre-trade transparency that ensures that adequate

information is made public as to the price level of orders or quotes for each share specified in paragraph 1, as well as the level of trading interest in that share.

In particular, the five best bid and offer price levels and/or two-way quotes of each market maker in that share shall be made public, if the characteristics of the price discovery mechanism permit it.

6. A summary of the information to be made public in accordance with paragraphs 2 to 5 is specified in Table 1 of Annex II.

Article 18

(Articles 29(2) and 44(2) of Directive 2004/39/EC) Waivers based on market model and type of order or transaction.

1. Waivers in accordance with Article 29(2) and 44(2) of Directive 2004/39/EC may be granted by the competent authorities for systems operated by an MTF or a regulated market, if those systems satisfy one of the following criteria:

(a) they must be based on a trading methodology by which the price is determined in accordance with a reference price generated by another system, where that reference price is widely published and is regarded generally by market participants as a reliable reference price;

(b) they formalise negotiated transactions, each of which meets one of the following criteria:

(i) it is made at or within the current volume weighted spread reflected on the order book or the quotes of the market makers of the regulated market or MTF operating that system or, where the share is not traded continuously, within a percentage of a suitable reference price, being a percentage and a reference price set in advance by the system operator;

(ii) it is subject to conditions other than the current market price of the share.

For the purposes of paragraph (b), the other conditions specified in the rules of the regulated market or MTF for a transaction of this kind must also have been fulfilled.

In the case of systems having functionality other than as described in paragraphs (a) or (b), the waiver shall not apply to that other functionality.

2. Waivers in accordance with Articles 29(2) and 44(2) of Directive 2004/39/EC based on the type of orders may be granted only in relation to orders held in an order management facility maintained by the regulated market or the MTF pending their being disclosed to the market.

Article 19

(Articles 29(2) and 44(2) of Directive 2004/39/EC) References to negotiated transaction.

For the purpose of Article 18(1)(b) a negotiated transaction shall mean a transaction involving members or participants of a regulated market or an MTF which is negotiated privately but executed within the regulated market or MTF and where that member or participant in doing so undertakes one of the following tasks:

(a) dealing on own account with another member or participant who acts for the account of a client;

(b) dealing with another member or participant, where both are executing orders on own account;

(c) acting for the account of both the buyer and seller;

(d) acting for the account of the buyer, where another member or participant acts for the account of the seller;

(e) trading for own account against a client order.

Article 20

(Articles 29(2) and 44(2), and fifth subparagraph of Article 27(1) of Directive 2004/39/EC) Waivers in relation to transactions which are large in scale.

An order shall be considered to be large in scale compared with normal market size if it is equal to or larger than the minimum size of order specified in Table 2 in Annex II. For the purposes of determining whether an order is large in scale compared to normal market size, all shares admitted to trading on a regulated market shall be classified in accordance with their average daily turnover, which shall be calculated in accordance with the procedure set out in Article 33.

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SECTION 2

Pre-trade transparency for systematic internalisers

Article 21

(Article 4(1)(7) of Directive 2004/39/EC) Criteria for determining whether an investment firm is a systematic internaliser.

1. Where an investment firm deals on own account by executing client orders outside a regulated market or an MTF, it shall be treated as a systematic internaliser if it meets the following criteria indicating that it performs that activity on an organised, frequent and systematic basis:

(a) the activity has a material commercial role for the firm, and is carried on in accordance with non-discretionary rules and procedures;

(b) the activity is carried on by personnel, or by means of an automated technical system, assigned to that purpose, irrespective of whether those personnel or that system are used exclusively for that purpose;

(c) the activity is available to clients on a regular or continuous basis.

2. An investment firm shall cease to be a systematic internaliser in one or more shares if it ceases to carry on the activity specified in paragraph 1 in respect of those shares, provided that it has announced in advance that it intends to cease that activity using the same publication channels for that announcement as it uses to publish its quotes or, where that is not possible, using a channel which is equally accessible to its clients and other market participants.

3. The activity of dealing on own account by executing client orders shall not be treated as performed on an organised, frequent and systematic basis where the following conditions apply:

(a) the activity is performed on an ad hoc and irregular bilateral basis with wholesale counterparties as part of business relationships which are themselves characterised by dealings above standard market size;

(b) the transactions are carried out outside the systems habitually used by the firm concerned for any business that it carries out in the capacity of a systematic internaliser.

4. Each competent authority shall ensure the maintenance and publication of a list of all systematic internalisers, in respect of shares admitted to trading on a regulated market, which it has authorised as investment firms.

It shall ensure that the list is current by reviewing it at least annually.

The list shall be made available to the Committee of European Securities Regulators. It shall be considered as published when it is published by the Committee of European Securities Regulators in accordance with Article 34(5).

Article 22

(Article 27 of Directive 2004/39/EC) Determination of liquid shares.

1. A share admitted to trading on a regulated market shall be considered to have a liquid market if the share is traded daily, with a free float not less than EUR 500 million, and one of the following conditions is satisfied:

(a) the average daily number of transactions in the share is not less than 500;

(b) the average daily turnover for the share is not less than EUR 2 million.

However, a Member State may, in respect of shares for which it is the most relevant market, specify by notice that both of those conditions are to apply. That notice shall be made public.

2. A Member State may specify the minimum number of liquid shares for that Member State. The minimum number shall be no greater than five. The specification shall be made public.

3. Where, pursuant to paragraph 1, a Member State would be the most relevant market for fewer liquid shares than the minimum number specified in accordance with paragraph 2, the competent authority for that Member State may designate one or more additional liquid shares, provided that the total number of shares which are considered in consequence to be liquid shares for which that Member State is the most relevant market does not exceed the minimum number specified by that Member State.

The competent authority shall designate the additional liquid shares successively in decreasing order of average daily turnover from among the shares for which it is the relevant competent authority that are admitted to trading on a regulated market and are traded daily.

4. For the purposes of the first subparagraph of paragraph 1, the calculation of the free float of a share shall exclude holdings exceeding 5 % of the total voting rights of the issuer, unless such a holding is held by a collective investment undertaking or a pension fund.

Voting rights shall be calculated on the basis of all the shares to which voting rights are attached, even if the exercise of such a right is suspended.

5. A share shall not be considered to have a liquid market for the purposes of Article 27 of Directive 2004/39/EC until six weeks after its first admission to trading on a regulated market, if the estimate of the total market capitalisation for that share at the start of the first day's trading after that admission, provided in accordance with Article 33(3), is less than EUR 500 million.

6. Each competent authority shall ensure the maintenance and publication of a list of all liquid shares for which it is the relevant competent authority. It shall ensure that the list is current by reviewing it at least annually.

The list shall be made available to the Committee of European Securities Regulators. It shall be considered as published when it is published by the Committee of European Securities Regulators in accordance with Article 34(5).

Article 23

(Fourth subparagraph of Article 27(1) of Directive 2004/39/EC) Standard market size.

In order to determine the standard market size for liquid shares, those shares shall be grouped into classes in terms of the average value of orders executed in accordance with Table 3 in Annex II.

Article 24

(Article 27(1) of Directive 2004/39/EC) Quotes reflecting prevailing market conditions.

A systematic internaliser shall, for each liquid share for which it is a systematic internaliser, maintain the following:

(a) a quote or quotes which are close in price to comparable quotes for the same share in other trading venues;

(b) a record of its quoted prices, which it shall retain for a period of 12 months or such longer period as it considers appropriate.

The obligation laid down in paragraph (b) is without prejudice to the obligation of the investment firm under Article 25(2) of Directive 2004/39/EC to keep at the disposal of the competent authority for at least five years the relevant data relating to all transactions it has carried out.

Article 25

(Fifth subparagraph of Article 27(3) and Article 27(6) of Directive 2004/39/EC)Execution of orders by systematic internalisers.

1. For the purposes of the fifth subparagraph of Article 27(3) of Directive 2004/39/EC, execution in several securities shall be regarded as part of one transaction if that one transaction is a portfolio trade that involves 10 or more securities.

For the same purposes, an order subject to conditions other than the current market price means any order which is neither an order for the execution of a transaction in shares at the prevailing market price, nor a limit order.

2. For the purposes of Article 27(6) of Directive 2004/39/EC, the number or volume of orders shall be regarded as considerably exceeding the norm if a systematic internaliser cannot execute those orders without exposing itself to undue risk.

In order to identify the number and volume of orders that it can execute without exposing itself to undue risk, a systematic internaliser shall maintain and implement as part of its risk management policy under Article 7 of Commission Directive 2006/73/EC a non-discriminatory policy which takes into account the volume of the transactions, the capital that the firm has available to cover the risk for that type of trade, and the prevailing conditions in the market in which the firm is operating.

3. Where, in accordance with Article 27(6) of Directive 2004/39/EC, an investment firm limits the number or volume of orders it undertakes to execute, it shall set out in writing, and make available to clients and potential clients, the arrangements designed to ensure that such a limitation does not result in the discriminatory treatment of clients.

Article 26

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(Fourth subparagraph Article 27(3) of Directive 2004/39/EC) Retail size.

For the purposes of the fourth subparagraph of Article 27(3) of Directive 2004/39/EC, an order shall be regarded as being of a size bigger than the size customarily undertaken by a retail investor if it exceeds EUR 7500.

SECTION 3

Post-trade transparency for regulated markets, MTFs and investment firms

Article 27

(Articles 28, 30 and 45 of Directive 2004/39/EC) Post-trade transparency obligation.

1. Investment firms, regulated markets, and investment firms and market operators operating an MTF shall, with regard to transactions in respect of shares admitted to trading on regulated markets concluded by them or, in the case of regulated markets or MTFs, within their systems, make public the following details:

(a) the details specified in paragraphs 2, 3, 6, 16, 17, 18, and 21 of Table 1 in Annex I;

(b) an indication that the exchange of shares is determined by factors other than the current market valuation of the share, where applicable;

(c) an indication that the trade was a negotiated trade, where applicable;

(d) any amendments to previously disclosed information, where applicable.

Those details shall be made public either by reference to each transaction or in a form aggregating the volume and price of all transactions in the same share taking place at the same price at the same time.

2. By way of exception, a systematic internaliser shall be entitled to use the acronym “SI” instead of the venue identification referred to in paragraph 1(a) in respect of a transaction in a share that is executed in its capacity as a systematic internaliser in respect of that share.

The systematic internaliser may exercise that right only as long as it makes available to the public aggregate quarterly data as to the transactions executed in its capacity as a systematic internaliser in respect of that share relating to the most recent calendar quarter, or part of a calendar quarter, during which the firm acted as a systematic internaliser in respect of that share. That data shall be made available no later than one month after the end of each calendar quarter.

It may also exercise that right during the period between the date specified in Article 41(2), or the date on which the firm commences to be a systematic internaliser in relation to a share, whichever is the later, and the date that aggregate quarterly data in relation to a share is first due to be published.

3. The aggregated quarterly data referred to in the second subparagraph of paragraph 2 shall contain the following information for the share in respect of each trading day of the calendar quarter concerned:

(a) the highest price;

(b) the lowest price;

(c) the average price;

(d) the total number of shares traded;

(e) the total number of transactions;

(f) such other information as the systematic internaliser decides to make available.

4. Where the transaction is executed outside the rules of a regulated market or an MTF, one of the following investment firms shall, by agreement between the parties, arrange to make the information public:

(a) the investment firm that sells the share concerned;

(b) the investment firm that acts on behalf of or arranges the transaction for the seller;

(c) the investment firm that acts on behalf of or arranges the transaction for the buyer;

(d) the investment firm that buys the share concerned.

In the absence of such an agreement, the information shall be made public by the investment firm determined by proceeding sequentially from

paragraph (a) to paragraph (d) until the first paragraph that applies to the case in question.

The parties shall take all reasonable steps to ensure that the transaction is made public as a single transaction. For those purposes two matching trades entered at the same time and price with a single party interposed shall be considered to be a single transaction.

Article 28

(Articles 28, 30 and 45 of Directive 2004/39/EC) Deferred publication of large transactions.

The deferred publication of information in respect of transactions may be authorised, for a period no longer than the period specified in Table 4 in Annex II for the class of share and transaction concerned, provided that the following criteria are satisfied:

(a) the transaction is between an investment firm dealing on own account and a client of that firm;

(b) the size of the transaction is equal to or exceeds the relevant minimum qualifying size, as specified in Table 4 in Annex II.

In order to determine the relevant minimum qualifying size for the purposes of paragraph (b), all shares admitted to trading on a regulated market shall be classified in accordance with their average daily turnover to be calculated in accordance with Article 33.

SECTION 4

Provisions common to pre- and post-trade transparency

Article 29

(Articles 27(3), 28(1), 29(1), 44(1) and 45(1) of Directive 2004/39/EC) Publication and availability of pre- and post-trade transparency data.

1. A regulated market, MTF or systematic internaliser shall be considered to publish pre-trade information on a continuous basis during normal trading hours if that information is published as soon as it becomes available during the normal trading hours of the regulated market, MTF or systematic internaliser concerned, and remains available until it is updated.

2. Pre-trade information, and post-trade information relating to transactions taking place on trading venues and within normal trading hours, shall be

made available as close to real time as possible. Post-trade information relating to such transactions shall be made available in any case within three minutes of the relevant transaction.

3. Information relating to a portfolio trade shall be made available with respect to each constituent transaction as close to real time as possible, having regard to the need to allocate prices to particular shares. Each constituent transaction shall be assessed separately for the purposes of determining whether deferred publication in respect of that transaction is available under Article 28.

4. Post-trade information relating to transactions taking place on a trading venue but outside its normal trading hours shall be made public before the opening of the next trading day of the trading venue on which the transaction took place.

5. For transactions that take place outside a trading venue, post-trade information shall be made public:

(a) if the transaction takes place during a trading day of the most relevant market for the share concerned, or during the investment firm's normal trading hours, as close to real time as possible. Post-trade information relating to such transactions shall be made available in any case within three minutes of the relevant transaction;

(b) in a case not covered by paragraph (a), immediately upon the commencement of the investment firm's normal trading hours or at the latest before the opening of the next trading day in the most relevant market for that share.

Article 30

(Articles 27, 28, 29, 30, 44 and 45 of Directive 2004/39/EC) Public availability of pre- and post-trade information.

For the purposes of Articles 27, 28, 29, 30, 44 and 45 of Directive 2004/39/EC and of this Regulation, pre- and post-trade information shall be considered to be made public or available to the public if it is made available generally through one of the following to investors located in the Community:

(a) the facilities of a regulated market or an MTF;

(b) the facilities of a third party;

(c) proprietary arrangements.

Article 31

(Article 22(2) of Directive 2004/39/EC) Disclosure of client limit orders.

An investment firm shall be considered to disclose client limit orders that are not immediately executable if it transmits the order to a regulated market or MTF that operates an order book trading system, or ensures that the order is made public and can be easily executed as soon as market conditions allow.

Article 32

(Article 22(2), 27, 28, 29, 30, 44 and 45 of Directive 2004/39/EC) Arrangements for making information public.

Any arrangement to make information public, adopted for the purposes of Articles 30 and 31, shall satisfy the following conditions:

(a) it must include all reasonable steps necessary to ensure that the information to be published is reliable, monitored continuously for errors, and corrected as soon as errors are detected;

(b) it must facilitate the consolidation of the data with similar data from other sources;

(c) it must make the information available to the public on a non-discriminatory commercial basis at a reasonable cost.

Article 33

(Articles 27, 28, 29, 30, 44 and 45 of Directive 2004/39/EC) Calculations and estimates for shares admitted to trading on a regulated market.

1. In respect of each share that is admitted to trading on a regulated market, the relevant competent authority for that share shall ensure that the following calculations are made in respect of that share promptly after the end of each calendar year:

(a) the average daily turnover;

(b) the average daily number of transactions;

(c) for those shares which satisfy the conditions laid down in Article 22(1)(a) or (b) (as applicable), the free float as at 31 December;

(d) if the share is a liquid share, the average value of the orders executed.

This paragraph and paragraph 2 shall not apply to a share which is first admitted to trading on a regulated market four weeks or less before the end of the calendar year.

2. The calculation of the average daily turnover, average value of the orders executed and average daily number of transactions shall take into account all the orders executed in the Community in respect of the share in question between 1 January and 31 December of the preceding year, or, where applicable, that part of the year during which the share was admitted to trading on a regulated market and was not suspended from trading on a regulated market.

In the calculations of the average daily turnover, average value of the orders executed and average daily number of transactions of a share, non-trading days in the Member State of the relevant competent authority for that share shall be excluded.

3. Before the first admission of a share to trading on a regulated market, the relevant competent authority for that share shall ensure that estimates are provided, in respect of that share, of the average daily turnover, the market capitalisation as it will stand at the start of the first day of trading and, where the estimate of the market capitalisation is EUR 500 million or more:

(a) the average daily number of transactions and, for those shares which satisfy the conditions laid down in Article 22(1)(a) or (b) (as applicable), the free float;

(b) in the case of a share that is estimated to be a liquid share, the average value of the orders executed.

The estimates shall relate to the six-week period following admission to trading, or the end of that period, as applicable, and shall take account of any previous trading history of the share, as well as that of shares that are considered to have similar characteristics.

4. After the first admission of a share to trading on a regulated market, the relevant competent authority for that share shall ensure that, in respect of that share, the figures referred to in paragraphs (a) to (d) of paragraph 1 are calculated, using data relating to the first four weeks' trading, as if a

reference in paragraph (c) of paragraph 1 to 31 December were a reference to the end of the first four weeks' trading, as soon as practicable after those data are available, and in any case before the end of the six-week period referred to in Article 22(5).

5. During the course of a calendar year, the relevant competent authorities shall ensure the review and where necessary the recalculation of the average daily turnover, average value of the orders executed, average daily number of transactions executed and the free float whenever there is a change in relation to the share or the issuer which significantly affects the previous calculations on an ongoing basis.

6. The calculations referred to in paragraphs 1 to 5 which are to be published on or before the first trading day in March 2009 shall be made on the basis of the data relating to the regulated market or markets of the Member State which is the most relevant market in terms of liquidity for the share in question. For those purposes, negotiated transactions within the meaning of Article 19 shall be excluded from the calculations.

Article 34

(Articles 27, 28, 29, 30, 44 and 45 of Directive 2004/39/EC) Publication and effect of results of required calculations and estimates.

1. On the first trading day of March of each year, each competent authority shall, in relation to each share for which it is the relevant competent authority that was admitted to trading on a regulated market at the end of the preceding calendar year, ensure the publication of the following information:

(a) the average daily turnover and average daily number of transactions, as calculated in accordance with Article 33(1) and (2);

(b) the free float and average value of the orders executed, where calculated in accordance with Article 33(1) and (2).

This paragraph shall not apply to shares to which the second subparagraph of Article 33(1) applies.

2. The results of the estimates and calculations required under Article 33(3), (4) or (5) shall be published as soon as practicable after the calculation or estimate is completed.

3. The information referred to in paragraphs 1 or 2 shall be considered as published when it is published by the Committee of European Securities Regulators in accordance with paragraph 5.

4. For the purposes of this Regulation, the following shall apply:

(a) the classification based on the publication referred to in paragraph 1 shall apply for the 12-month period starting on 1 April following publication and ending on the following 31 March;

(b) the classification based on the estimates provided for in Article 33(3) shall apply from the relevant first admission to trading until the end of the six-week period referred to in Article 22(5);

(c) the classification based on the calculations specified in Article 33(4) shall apply from the end of the six-week period referred to in Article 22(5), until:

(i) where the end of that six-week period falls between 15 January and 31 March (both inclusive) in a given year, 31 March of the following year;

(ii) otherwise, the following 31 March after the end of that period.

However, the classification based on the recalculations specified in Article 33(5) shall apply from the date of publication and, unless further recalculated under Article 33(5), until the following 31 March.

5. The Committee of European Securities Regulators shall, on the basis of data supplied to it by or on behalf of competent authorities, publish on its website consolidated and regularly updated lists of:

(a) every systematic internaliser in respect of a share admitted to trading on a regulated market;

(b) every share admitted to trading on a regulated market, specifying:

(i) the average daily turnover, average daily number of transactions and, for those shares which satisfy the conditions laid down in Article 22(1)(a) or (b) (as applicable), the free float;

(ii) in the case of a liquid share, the average value of the orders executed and the standard market size for that share;

(iii) in the case of a liquid share which has been designated as an additional liquid share in accordance with Article 22(3), the name of the competent authority that so designated it; and

(iv) the relevant competent authority.

6. Each competent authority shall ensure the first publication of the details referred to in paragraphs (a) and (b) of paragraph 1 on the first trading day in July 2007, based on the reference period 1 April 2006 to 31 March 2007. By way of derogation from paragraph 4, the classification based on that publication shall apply for the five-month period starting on 1 November 2007 and ending on 31 March 2008.

CHAPTER V

ADMISSION OF FINANCIAL INSTRUMENTS TO TRADING

Article 35

(Article 40(1) of Directive 2004/39/EC) Transferable securities.

1. Transferable securities shall be considered freely negotiable for the purposes of Article 40(1) of Directive 2004/39/EC if they can be traded between the parties to a transaction, and subsequently transferred without restriction, and if all securities within the same class as the security in question are fungible.

2. Transferable securities which are subject to a restriction on transfer shall not be considered as freely negotiable unless that restriction is not likely to disturb the market.

3. Transferable securities that are not fully paid may be considered as freely negotiable if arrangements have been made to ensure that the negotiability of such securities is not restricted and that adequate information concerning the fact that the securities are not fully paid, and the implications of that fact for shareholders, is publicly available.

4. When exercising its discretion whether to admit a share to trading, a regulated market shall, in assessing whether the share is capable of being traded in a fair, orderly and efficient manner, take into account the following:

(a) the distribution of those shares to the public;

(b) such historical financial information, information about the issuer, and information providing a business overview as is required to be prepared under Directive 2003/71/EC, or is or will be otherwise publicly available.

5. A transferable security that is officially listed in accordance with Directive 2001/34/EC of the European Parliament and of the Council, and the listing of which is not suspended, shall be deemed to be freely negotiable and capable of being traded in a fair, orderly and efficient manner.

6. For the purposes of Article 40(1) of Directive 2004/39/EC, when assessing whether a transferable security referred to in Article 4(1)(18)(c) of that Directive is capable of being traded in a fair, orderly and efficient manner, the regulated market shall take into account, depending on the nature of the security being admitted, whether the following criteria are satisfied:

(a) the terms of the security are clear and unambiguous and allow for a correlation between the price of the security and the price or other value measure of the underlying;

(b) the price or other value measure of the underlying is reliable and publicly available;

(c) there is sufficient information publicly available of a kind needed to value the security;

(d) the arrangements for determining the settlement price of the security ensure that this price properly reflects the price or other value measure of the underlying;

(e) where the settlement of the security requires or provides for the possibility of the delivery of an underlying security or asset rather than cash settlement, there are adequate settlement and delivery procedures for that underlying as well as adequate arrangements to obtain relevant information about that underlying.

Article 36

(Article 40(1) of Directive 2004/39/EC) Units in collective investment undertakings.

1. A regulated market shall, when admitting to trading units in a collective investment undertaking, whether or not that undertaking is constituted in accordance with Directive 85/611/EEC, satisfy itself that the collective investment undertaking complies or has complied with the registration, notification or other procedures which are a necessary precondition for the marketing of the collective investment undertaking in the jurisdiction of the regulated market.

2. Without prejudice to Directive 85/611/EEC or any other Community legislation or national law relating to collective investment undertakings, Member States may provide that compliance with the requirements referred to in paragraph 1 is not a necessary precondition for the admission of units in a collective investment undertaking to trading on a regulated market.

3. When assessing whether units in an open-ended collective investment undertaking are capable of being traded in a fair, orderly and efficient manner in accordance with Article 40(1) of Directive 2004/39/EC, the regulated market shall take the following aspects into account:

(a) the distribution of those units to the public;

(b) whether there are appropriate market-making arrangements, or whether the management company of the scheme provides appropriate alternative arrangements for investors to redeem the units;

(c) whether the value of the units is made sufficiently transparent to investors by means of the periodic publication of the net asset value.

4. When assessing whether units in a closed-end collective investment undertaking are capable of being traded in a fair, orderly and efficient manner in accordance with Article 40(1) of Directive 2004/39/EC, the regulated market shall take the following aspects into account:

(a) the distribution of those units to the public;

(b) whether the value of the units is made sufficiently transparent to investors, either by publication of information on the fund's investment strategy or by the periodic publication of net asset value.

Article 37

(Article 40(1) and (2) of Directive 2004/39/EC) Derivatives.

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1. When admitting to trading a financial instrument of a kind listed in paragraphs of Sections C(4) to (10) of Annex I to Directive 2004/39/EC, regulated markets shall verify that the following conditions are satisfied:

(a) the terms of the contract establishing the financial instrument must be clear and unambiguous, and enable a correlation between the price of the financial instrument and the price or other value measure of the underlying;

(b) the price or other value measure of the underlying must be reliable and publicly available;

(c) sufficient information of a kind needed to value the derivative must be publicly available;

(d) the arrangements for determining the settlement price of the contract must be such that the price properly reflects the price or other value measure of the underlying;

(e) where the settlement of the derivative requires or provides for the possibility of the delivery of an underlying security or asset rather than cash settlement, there must be adequate arrangements to enable market participants to obtain relevant information about that underlying as well as adequate settlement and delivery procedures for the underlying.

2. Where the financial instruments concerned are of a kind listed in Sections C (5), (6), (7) or (10) of Annex I to Directive 2004/39/EC, paragraph (b) of paragraph 1 shall not apply if the following conditions are satisfied:

(a) the contract establishing that instrument must be likely to provide a means of disclosing to the market, or enabling the market to assess, the price or other value measure of the underlying, where the price or value measure is not otherwise publicly available;

(b) the regulated market must ensure that appropriate supervisory arrangements are in place to monitor trading and settlement in such financial instruments;

(c) the regulated market must ensure that settlement and delivery, whether physical delivery or by cash settlement, can be effected in accordance with the contract terms and conditions of those financial instruments.

FINANCIAL SERVICES (MARKETS IN FINANCIAL INSTRUMENTS) REGULATIONS 2007
CHAPTER VI

DERIVATIVE FINANCIAL INSTRUMENTS

Article 38

(Article 4(1)(2) of Directive 2004/39/EC) Characteristics of other derivative financial instruments.

1. For the purposes of Section C(7) of Annex I to Directive 2004/39/EC, a contract which is not a spot contract within the meaning of paragraph 2 of this Article and which is not covered by paragraph 4 shall be considered as having the characteristics of other derivative financial instruments and not being for commercial purposes if it satisfies the following conditions:

(a) it meets one of the following sets of criteria:

(i) it is traded on a third country trading facility that performs a similar function to a regulated market or an MTF;

(ii) it is expressly stated to be traded on, or is subject to the rules of, a regulated market, an MTF or such a third country trading facility;

(iii) it is expressly stated to be equivalent to a contract traded on a regulated market, MTF or such a third country trading facility;

(b) it is cleared by a clearing house or other entity carrying out the same functions as a central counterparty, or there are arrangements for the payment or provision of margin in relation to the contract;

(c) it is standardised so that, in particular, the price, the lot, the delivery date or other terms are determined principally by reference to regularly published prices, standard lots or standard delivery dates.

2. A spot contract for the purposes of paragraph 1 means a contract for the sale of a commodity, asset or right, under the terms of which delivery is scheduled to be made within the longer of the following periods:

(a) two trading days;

(b) the period generally accepted in the market for that commodity, asset or right as the standard delivery period.

However, a contract is not a spot contract if, irrespective of its explicit terms, there is an understanding between the parties to the contract that delivery of the underlying is to be postponed and not to be performed within the period mentioned in the first subparagraph.

3. For the purposes of Section C(10) of Annex I to Directive 2004/39/EC, a derivative contract relating to an underlying referred to in that Section or in Article 39 shall be considered to have the characteristics of other derivative financial instruments if one of the following conditions is satisfied:

(a) that contract is settled in cash or may be settled in cash at the option of one or more of the parties, otherwise than by reason of a default or other termination event;

(b) that contract is traded on a regulated market or an MTF;

(c) the conditions laid down in paragraph 1 are satisfied in relation to that contract.

4. A contract shall be considered to be for commercial purposes for the purposes of Section C(7) of Annex I to Directive 2004/39/EC, and as not having the characteristics of other derivative financial instruments for the purposes of Sections C(7) and (10) of that Annex, if it is entered into with or by an operator or administrator of an energy transmission grid, energy balancing mechanism or pipeline network, and it is necessary to keep in balance the supplies and uses of energy at a given time.

Article 39

(Article 4(1)(2) of Directive 2004/39/EC) Derivatives within Section C(10) of Annex I to Directive 2004/39/EC.

In addition to derivative contracts of a kind referred to in Section C(10) of Annex I to Directive 2004/39/EC, a derivative contract relating to any of the following shall fall within that Section if it meets the criteria set out in that Section and in Article 38(3):

(a) telecommunications bandwidth;

(b) commodity storage capacity;

(c) transmission or transportation capacity relating to commodities, whether cable, pipeline or other means;

(d) an allowance, credit, permit, right or similar asset which is directly linked to the supply, distribution or consumption of energy derived from renewable resources;

(e) a geological, environmental or other physical variable;

(f) any other asset or right of a fungible nature, other than a right to receive a service, that is capable of being transferred;

(g) an index or measure related to the price or value of, or volume of transactions in any asset, right, service or obligation.