



STATUTORY INSTRUMENTS.

**S.I. No. 277 of 2007**

---

TRANSPARENCY (DIRECTIVE 2004/109/EC) REGULATIONS 2007

**(Prn. A7/1107)**

**S.I. No. 277 of 2007**

## TRANSPARENCY (DIRECTIVE 2004/109/EC) REGULATIONS 2007

I, MICHAEL AHERN TD, Minister of State at the Department of Enterprise, Trade and Employment, in exercise of the powers conferred on me by section 20 of the Investment Funds, Companies and Miscellaneous Provisions Act 2006 (No. 41 of 2006) and the Enterprise, Trade and Employment (Delegation of Ministerial Functions) Order 2007 (S.I. No. 51 of 2007), and for the purpose of giving effect to Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 and for the other purposes mentioned in that section, hereby make the following regulations:

## PART 1

## PRELIMINARY AND GENERAL

*Citation, commencement and construction.*

1. (1) These Regulations may be cited as the Transparency (Directive 2004/109/EC) Regulations 2007.

(2) These Regulations shall come into operation on 13th June 2007.

(3) These Regulations shall be read as one with the Companies Acts.

*Interpretation and application.*

2. (1) In these Regulations:

“Act of 2006” means the Investment Funds, Companies and Miscellaneous Provisions Act 2006 (No.41 of 2006);

“admitted to trading on a regulated market” means admitted to trading on a regulated market situated or operating within a Member State;

“approved stock exchange” has the same meaning as it has in the Stock Exchange Act 1995 (No. 9 of 1995);

“Bank” means the Central Bank and Financial Services Authority of Ireland;

“collective investment undertaking other than the closed-end type” means unit trusts and investment companies:

- (a) the object of which is the collective investment of capital provided by the public and which operate on the principle of risk spreading; and
- (b) the units of which are, at the holder’s request, repurchased or redeemed, directly or indirectly, out of the assets of the undertaking;

*Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 15th June, 2007.*

“company” includes any body corporate;

“central competent authority of a home Member State” means—

- (a) where the State is the home Member State, the Bank, or
- (b) where the State is a host Member State, the central competent administrative authority designated as such under the national law of the home Member State for the purposes of the Directive;

“contravention” includes, in relation to any provision, a failure to comply with that provision;

“controlled undertaking” means any undertaking—

- (a) in which a person has a majority of the voting rights, or
- (b) of which a person has the right to appoint or remove a majority of the members of the administrative, management or supervisory body and is at the same time a shareholder in, or member of, the undertaking in question, or
- (c) of which a person is a shareholder or member and alone controls a majority of the shareholders’ or members’ voting rights, respectively, pursuant to an agreement entered into with other shareholders or members of the undertaking in question, or
- (d) over which a person has the power to exercise, or actually exercises, dominant influence or control;

“Court” means the High Court;

“credit institution” means an undertaking as defined by Article 4(1)(a) of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions;

“debt securities” means bonds or other forms of transferable securitised debts, with the exception of securities which are equivalent to shares in companies or which, if converted or if the rights conferred by them are exercised, give rise to a right to acquire shares or securities equivalent to shares;

“Directive” means Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by the Protocol signed at Brussels on 17 March 1993;

“EEA State” means a state that is a contracting party to the EEA Agreement;

“electronic means” are means of electronic equipment for the processing (including digital compression), storage and transmission of data, employing wires, radio, optical technologies, or any other electromagnetic means;

“enactment” includes an instrument made under an enactment;

“home Member State” means—

- (a) in the case of an issuer of debt securities the denomination per unit of which is less than €1,000 or an issuer of shares:
  - (i) if the issuer is incorporated or formed in a Member State, the Member State in which it has its registered office,
  - (ii) if the issuer is incorporated or formed in a state or territory which is not a Member State, the Member State in which it is required to file the annual information with the competent authority in accordance with Article 10 of Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003, and
- (b) in the case of an issuer of debt securities not falling within paragraph (a), the Member State chosen by the issuer from among the Member State in which the issuer has its registered office and those Member States which have admitted its securities to trading on a regulated market on their territory,

and paragraph (2) has effect for the purposes of this definition;

“host Member State” means a Member State in which securities are admitted to trading on a regulated market, if different from the home Member State;

“IAASA” means the Irish Auditing and Accounting Supervisory Authority;

“IFRS” means International Financial Reporting Standards within the meaning of Regulation (EC) No. 1606/2002;

“implementing measures” means any measures directly applicable in consequence of the Directive and, without prejudice to the generality of the foregoing, includes Commission Decision 2006/891/EC of 4 December 2006;

“in writing” includes by facsimile;

“issuer” means a legal entity governed by private or public law, including a State, whose securities are admitted to trading on a regulated market, the issuer being, in the case of depository receipts representing securities, the issuer of the securities represented;

“management company” means a company as defined in Article 1a(2) 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);

“market maker” means a person who holds himself or herself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling financial instruments against his or her proprietary capital at prices defined by him or her;

“market operator” means one or more persons who manage or operate the business of a regulated market (or who do both those things), and may be the regulated market itself;

“Member State” means a Member State of the European Union or an EEA State;

“Minister” means the Minister for Enterprise, Trade and Employment;

“regulated information” means all information which the issuer, or any other person who has applied for the admission of securities to trading on a regulated market without the issuer’s consent, is required to disclose—

- (a) under the Directive,
- (b) under Article 6 of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003, or
- (c) by virtue of more stringent requirements made by the Bank in exercise of the powers under Regulation 40(3) or under other laws, regulations or administrative provisions of the State adopted under Article 3(1) of the Directive;

“regulated market” means a market as defined by Article 4(1), point 14, of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004;

“RIS” means a service of the kind commonly known as a regulatory information service;

“securities” means transferable securities as defined in Article 4(1), point 18, of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 with the exception of money-market instruments, as defined in Article 4(1), point 19, of that Directive having a maturity of less than 12 months;

“securities issued in a continuous or repeated manner” means debt securities of the same issuer on tap or at least two separate issues of securities of a similar type or class (or both);

“shareholder” means any person governed by private or public law, who holds, directly or indirectly:

- (a) shares of the issuer in the person’s own name and on the person’s own account,

- (b) shares of the issuer in the person's own name, but on behalf of another person,
- (c) depository receipts, in which case the holder of the depository receipt shall be considered as the shareholder of the underlying shares represented by the depository receipts;

“supplemental Directive” has the same meaning as it has in the Act of 2006;

“transparency (regulated markets) law” has the same meaning as it has in the Act of 2006;

“treasury shares” has the same meaning as it has in the Companies Acts;

“units of a collective investment undertaking” means securities issued by a collective investment undertaking and representing the rights of the participants in such an undertaking over its assets.

(2) (a) The definition of “home Member State” in paragraph (1) shall be applicable to debt securities in a currency other than euro, provided that the value of such denomination per unit is, at the date of the issue, less than €1,000, unless it is nearly equivalent to €1,000.

(b) For the purposes of paragraph (b) of the definition of “home Member State” in paragraph (1), the issuer may choose only one Member State as its home Member State. Its choice shall remain valid for at least three years unless its securities are no longer admitted to trading on any regulated market in the Community.

(3) For the purposes of the definition of “controlled undertaking” in paragraph (1), the references to the holder's rights in relation to voting, appointment and removal include references to the rights of any other undertaking controlled by the shareholder and those of any person acting, albeit in the person's own name, on behalf of the shareholder or of any other undertaking controlled by the shareholder.

(4) A word or expression that is used in these Regulations and is also used in the Directive or a supplemental Directive, as the case may be, shall have in these Regulations the same meaning as it has in the Directive or the supplemental Directive, as the case may be.

(5) A reference in these Regulations to a Directive or Regulation of the Council or Commission of the European Communities shall be construed as a reference to the Directive or Regulation as amended or extended by any other Directive or Regulation of the Council or Commission of the European Communities.

(6) These Regulations shall not apply to units issued by collective investment undertakings other than the closed-end type or units acquired or disposed of in such collective investment undertakings.

*Application of Parts 2, 3, 5, 6 and 7 subject to Regulation 40(3).*

3. (1) Any requirement specified in Part 2, 3, 5, 6 or 7 shall be read as being, and shall operate, subject to the Bank's not having exercised the power under Regulation 40(3) (in the circumstances where such power is exercisable) to make the person concerned subject to a more stringent requirement.

(2) Where that power is so exercised, the relevant requirement specified in any of the Parts mentioned in paragraph (1) shall, accordingly, be read and operate subject to such modifications as are necessary in consequence of the exercise of that power.

## PART 2

### PERIODIC FINANCIAL REPORTING

*Annual financial report.*

4. (1) Subject to Part 3, this Regulation applies to an issuer:

- (a) whose securities are admitted to trading on a regulated market, and
- (b) whose home Member State is the State.

(2) An issuer shall make public its annual financial report at the latest 4 months after the end of each financial year and ensure that it remains publicly available for at least 5 years.

(3) The annual financial report shall include:

- (a) the audited financial statements,
- (b) a management report, and
- (c) responsibility statements.

(4) (a) If an issuer is required to prepare consolidated accounts according to the Seventh Council Directive 83/349/EEC of 13 June 1983, the audited financial statements shall comprise:

- (i) consolidated accounts prepared in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002, and
- (ii) accounts of the parent company prepared in accordance with the national law of the Member State in which the parent company is incorporated.

(b) If an issuer is not required to prepare consolidated accounts, the audited financial statements shall comprise accounts prepared in accordance with the national law of the Member State in which the issuer is incorporated.

*Supplemental provisions in relation to Regulation 4.*

5. (1) References in this Regulation to consolidated accounts, financial statements, a management report or a responsibility statement are references to consolidated accounts, financial statements, a management report or a responsibility statement referred to in Regulation 4.

- (2) (a) If an issuer is required to prepare consolidated accounts, the financial statements shall be audited in accordance with Article 37 of the Seventh Council Directive 83/349/EEC of 13 June 1983 (the most recent measure adopted by the State for its implementation being the European Communities (Financial Reporting Standards and Miscellaneous Amendments) Regulations 2005 (S.I. No. 116 of 2005)).
  - (b) If an issuer is not required to prepare consolidated accounts, the financial statements shall be audited in accordance with Articles 51 and 51a of the Fourth Council Directive 78/660/EEC of 25 July 1978 (the most recent measure adopted by the State for their implementation being the regulations referred to in subparagraph (a)).
  - (c) The audit report, signed by the person or persons responsible for auditing the financial statements, shall be disclosed in full to the public together with the annual financial report.
- (3) (a) If an issuer is required to prepare consolidated accounts, the management report shall be drawn up in accordance with Article 36 of the Seventh Council Directive 83/349/EEC of 13 June 1983 (the most recent measure adopted by the State for its implementation being the regulations referred to in paragraph (2)(a)).
- (b) If the issuer is not required to prepare consolidated accounts, the management report shall be drawn up in accordance with Article 46 of the Fourth Council Directive 78/660/EEC of 25 July 1978 (the most recent measure adopted by the State for its implementation being the regulations referred to in paragraph (2)(a)).
- (4) (a) Responsibility statements shall be made by the persons responsible within the issuer.
- (b) The name and function of any person who makes a responsibility statement shall be clearly indicated in the responsibility statement.
- (c) For each person making a responsibility statement, the statement shall set out that to the best of his or her knowledge:
- (i) the financial statements, prepared in accordance with the applicable set of accounting standards, give a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer and the undertakings included in the consolidation taken as a whole; and



- (ii) the management report includes a fair review of the development and performance of the business and the position of the issuer and the undertakings included in the consolidation taken as a whole, together with a description of the principal risks and uncertainties that they face.

(5) The issuer is responsible for all information drawn up and made public in accordance with Regulation 4 and this Regulation.

*Half-yearly financial reports.*

6. (1) Subject to Part 3, this Regulation applies to an issuer:

- (a) whose shares or debt securities are admitted to trading on a regulated market, and
- (b) whose home Member State is the State.

(2) (a) An issuer shall make public a half-yearly financial report covering the first 6 months of the financial year.

- (b) The half-yearly financial report shall be made public as soon as possible, but no later than 2 months, after the end of the period to which the report relates.

- (c) An issuer shall ensure that the half-yearly financial report remains available to the public for at least 5 years.

(3) The half-yearly financial report shall include:

- (a) a condensed set of financial statements,
- (b) an interim management report, and
- (c) responsibility statements.

*Supplemental provisions in relation to Regulation 6.*

7. (1) In this Regulation, “condensed set of financial statements” means the financial statements referred to in Regulation 6(3)(a).

(2) (a) If an issuer is required to prepare consolidated accounts, the condensed set of financial statements shall be prepared in accordance with the international accounting standard applicable to the interim financial reporting adopted pursuant to the procedure provided for under Article 6 of Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002.

- (b) If an issuer is not required to prepare consolidated accounts, the condensed set of financial statements shall contain, as a minimum, the following:

- (i) a condensed balance sheet,

- (ii) a condensed profit and loss account, and
  - (iii) explanatory notes on these accounts.
- (3) (a) This paragraph applies to an issuer that is not required to prepare consolidated accounts.
- (b) In preparing the condensed balance sheet and the condensed profit and loss account an issuer shall follow the same principles for recognising and measuring as when preparing annual financial reports.
- (c) The condensed balance sheet and condensed profit and loss account shall show each of the headings and subtotals included in the most recent annual financial statements of the issuer. Additional line items shall be included if, as a result of their omission, the half-yearly financial statements would give a misleading view of the assets, liabilities, financial position and profit or loss of the issuer.
- (d) The half-yearly financial information shall include comparative information presented as follows:
- (i) balance sheet as at the end of the first 6 months of the current financial year and comparative balance sheet as at the end of the immediate preceding financial year; and
  - (ii) profit and loss account for the first 6 months of the current financial year with, from 2 years after 29 March 2007, comparative information for the comparable period for the preceding financial year.
- (e) The explanatory notes shall include the following:
- (i) sufficient information to ensure the comparability of the condensed half-yearly financial statements with the annual financial statements; and
  - (ii) sufficient information and explanations to ensure a user's proper understanding of any material changes in amounts and of any developments in the half-year period concerned, which are reflected in the balance sheet and the profit and loss account.

*Further supplemental provisions in relation to Regulation 6.*

8. (1) In this Regulation—

“condensed set of financial statements” means the financial statements referred to in Regulation 6(3)(a);

“interim management report” means the report referred to in Regulation 6(3)(b);

“responsibility statement” means a statement referred to in Regulation 6(3)(c).

- (2) The interim management report shall include at least:
- (a) an indication of important events that have occurred during the first 6 months of the financial year, and their impact on the condensed set of financial statements, and
  - (b) a description of the principal risks and uncertainties for the remaining 6 months of the financial year.
- (3) (a) In addition to the requirement contained in the preceding paragraph, an issuer of shares shall disclose in the interim management report the following information, as a minimum:
- (i) related parties' transactions that have taken place in the first 6 months of the current financial year and that have materially affected the financial position or the performance of the enterprise during that period; and
  - (ii) any changes in the related parties' transactions described in the last annual report that could have a material effect on the financial position or performance of the enterprise in the first 6 months of the current financial year.
- (b) If an issuer of shares is not required to prepare consolidated accounts, it shall disclose, as a minimum, any transactions which have been entered into with related parties by the issuer, including the amount of such transactions, the nature of the related party relationship and other information about the transactions necessary for an understanding of the financial position of the issuer, if such transactions are material and have not been concluded under normal market conditions.
- (c) In relation to transactions referred to in subparagraph (b), information about such transactions may be aggregated according to their nature except where separate information is necessary for an understanding of the effects of related party transactions on the financial position of the issuer.
- (4) (a) If the half-yearly financial report has been audited or reviewed by auditors pursuant to the Auditing Practices Board guidance on Review of Interim Financial Information, the audit report or review report shall be reproduced in full.
- (b) If the half-yearly financial report has not been audited or reviewed by auditors pursuant to the Auditing Practices Board guidance on Review of Interim Financial Information, an issuer shall make a statement to this effect in its report.
- (5) (a) Responsibility statements shall be made by the persons responsible within the issuer.

- (b) The name and function of any person who makes a responsibility statement shall be clearly indicated in the responsibility statement.
- (c) For each person making a responsibility statement, the statement shall confirm that to the best of his or her knowledge:
  - (i) the condensed set of financial statements, which has been prepared in accordance with the applicable set of accounting standards, gives a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer, or the undertakings included in the consolidation as a whole as required by Regulation 7(2);
  - (ii) the interim management report includes a fair review of the information required by paragraph (2), and
  - (iii) the interim management report includes a fair review of the information required by paragraph (3), in the case of an issuer of shares.
- (d) A person making a responsibility statement shall be regarded as satisfying the requirement contained in subparagraph (c)(i) by including a statement that the condensed set of financial statements have been prepared in accordance with:
  - (i) the international accounting standard applicable to the interim financial reporting adopted pursuant to the procedure provided for under Article 6 of Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002; or
  - (ii) for Irish issuers not using IFRS, pronouncements on half-yearly reports issued by the Accounting Standards Board; or
  - (iii) for all other issuers not using IFRS, a national accounting standard relating to interim reporting,provided always that a person making such a statement has reasonable grounds to be satisfied that the condensed set of financial statements prepared in accordance with such a standard is not misleading.
- (e) This application of true and fair view has no effect on the interpretation of the true and fair view for annual accounts in accordance with the Fourth Council Directive 78/660/EEC of 25 July 1978 and the Seventh Council Directive 83/349/EEC of 13 June 1983, and Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002.
- (f) In subparagraph (d)(ii) “Irish issuers” means issuers incorporated in the State as public limited companies (within the meaning of the Companies (Amendment) Act 1983 (No. 13 of 1983)).

(6) The issuer shall be responsible for all information drawn up and made public in accordance with Regulations 6 and 7 and this Regulation.

*Interim management statements.*

9. (1) Subject to Part 3, this Regulation applies to an issuer:
- (a) whose shares are admitted to trading on a regulated market; and
  - (b) whose home Member State is the State.
- (2) (a) An issuer, other than an issuer specified in paragraph (5), shall make public a statement by its management during the first 6 month period of the financial year and another statement by its management during the second 6 month period of the financial year, each of which is referred to in this Regulation as an “interim management statement”.
- (b) The statement required by this paragraph shall be made in a period between 10 weeks after the beginning, and 6 weeks before, the end of the relevant 6 month period.
- (3) The interim management statement shall contain information that covers the period between the beginning of the relevant 6 month period and the date of publication of the statement.
- (4) The interim management statement shall provide:
- (a) an explanation of material events and transactions that have taken place during the relevant period and their impact on the financial position of the issuer and its controlled undertakings, and
  - (b) a general description of the financial position and performance of the issuer and its controlled undertakings during the relevant period.
- (5) The issuer referred to in paragraph (2)(a) is an issuer that publishes quarterly financial reports:
- (a) in accordance with the legislation of a Member State; or
  - (b) in accordance with the rules of a regulated market; or
  - (c) of its own initiative.

### PART 3

#### EXEMPTIONS/THIRD COUNTRY EQUIVALENCE IN RESPECT OF PART 2

*Exemptions not dependent on a decision of Bank.*

10. (1) Regulations 4 to 9 shall not apply to the following issuers, namely a state, a regional or local authority of a state, a public international body of which at least one Member State is a member, the European Central Bank and

Member States' national central banks, whether or not they issue shares or other securities.

- (2) (a) Regulations 4 to 9 shall not apply to an issuer that issues exclusively debt securities admitted to trading on a regulated market the denomination per unit of which is at least €50,000 (or an equivalent amount).
- (b) Regulations 6 to 8 shall not apply to a credit institution whose shares are not admitted to trading on a regulated market and which has, in a continuous or repeated manner, only issued debt securities provided that:
- (i) the total nominal amount of all such debt securities remains below €100,000,000; and
- (ii) the credit institution has not published a prospectus in accordance with Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003.
- (c) Regulations 6 to 8 shall not apply to issuers already existing at the date of the entry into force of Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 which exclusively issue debt securities unconditionally and irrevocably guaranteed by the State or by one of its regional or local authorities, on a regulated market.

*Exemptions in respect of issuers whose registered office is in third country.*

11. (1) Where—

- (a) the registered office of an issuer is in a third country, and
- (b) that issuer is an issuer in respect of which the State is the home Member State,

the Bank, subject to paragraphs (2) to (9), may exempt that issuer from requirements under Regulations 4 to 9 provided that the law of the third country in question lays down equivalent requirements or such an issuer complies with requirements of the law of a third country that the Bank considers as equivalent.

(2) A third country shall be deemed to lay down requirements equivalent to those of Regulation 4(3)(b) where, under the law of that country, the annual management report is required to include at least the following information:

- (a) a fair review of the development and performance of the issuer's business and of its position, together with a description of the principal risks and uncertainties that it faces, such that the review presents a balanced and comprehensive analysis of the development and performance of the issuer's business and of its position, consistent with the size and complexity of the business;

(b) an indication of any important events that have occurred since the end of the financial year;

(c) indications of the issuer's likely future development.

(3) The analysis referred to in paragraph (2)(a) shall, to the extent necessary for an understanding of the issuer's development, performance or position, include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business.

(4) A third country shall be deemed to lay down requirements equivalent to those of Regulation 8(2) and (3) where, under the law of that country, a condensed set of financial statements is required in addition to the interim management report, and the interim management report is required to include at least the following information:

(a) review of the period covered;

(b) indications of the issuer's likely future development for the remaining six months of the financial year;

(c) for issuers of shares and if already not disclosed on an ongoing basis, major related parties transactions.

(5) A third country shall be deemed to lay down requirements equivalent to those of Regulations 5(3) and 8(5) where, under the law of that country, a person or persons within the issuer are responsible for the annual and half-yearly financial information, and in particular for the following:

(a) the compliance of the financial statements with the applicable reporting framework or set of accounting standards;

(b) the fairness of the management review included in the management report.

(6) A third country shall be deemed to lay down requirements equivalent to those of Regulation 9 where, under the law of that country, an issuer is required to publish quarterly financial reports.

(7) A third country shall be deemed to lay down requirements equivalent to those of Regulation 4(4)(a) where, under the law of that country, the provision of individual accounts by the parent company is not required but the issuer whose registered office is in that third country is required, in preparing consolidated accounts, to include the following information:

(a) for issuers of shares, dividends computation and ability to pay dividends;

(b) for all issuers, where applicable, minimum capital and equity requirements and liquidity issues.

(8) For the purposes of equivalence, the issuer must also be able to provide the Bank with additional audited disclosures giving information on the individual accounts of the issuer as a standalone, relevant to the elements of information referred to in subparagraphs (a) and (b) of paragraph (7). Those disclosures may be prepared under the accounting standards of the third country.

(9) (a) A third country shall be deemed to lay down requirements equivalent to those of Regulation 4(4)(b) in relation to individual accounts where, under the law of a third country, an issuer whose registered office is in that third country is not required to prepare consolidated accounts but is required to prepare its individual accounts in accordance with international accounting standards recognised pursuant to Article 3 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 as applicable within the Community or with third country national accounting standards equivalent to those standards.

(b) For the purposes of equivalence, if such financial information is not in line with those standards, it must be presented in the form of restated financial statements.

(c) In addition, the individual accounts must be audited independently.

(10) Notwithstanding that the Bank has, under this Regulation, exempted an issuer from requirements referred to in paragraph (1), the issuer shall comply with the requirements of Articles 19, 20 and 21 of the Directive (as implemented in the State by Parts 6 and 7) in respect of the information covered by the requirements laid down in the third country in question.

#### PART 4

##### LIABILITY FOR FALSE OR MISLEADING STATEMENTS IN CERTAIN PUBLICATIONS

12. (1) The publications to which this Regulation applies are any reports and statements published in compliance with any of Regulations 4 to 9 and 26.

(2) The securities to which this Regulation applies are—

(a) securities that are traded on a regulated market situated or operating in the State, and

(b) securities that—

(i) are traded on a regulated market situated or operating outside the State, and

(ii) are issued by an issuer for which the State is the home Member State.



- (3) The issuer of securities to which this Regulation applies is liable to pay compensation to a person who has—
- (a) acquired such securities issued by it, and
  - (b) suffered loss in respect of them as a result of—
    - (i) any untrue or misleading statement in a publication to which this section applies, or
    - (ii) the omission from any such publication of any matter required to be included in it.
- (4) The issuer is so liable only if a person discharging managerial responsibilities within the issuer in relation to the publication—
- (a) knew the statement to be untrue or misleading or was reckless as to whether it was untrue or misleading, or
  - (b) knew the omission to be dishonest concealment of a material fact.
- (5) A loss is not regarded as suffered as a result of the statement or omission in the publication unless the person suffering it acquired the relevant securities—
- (a) in reliance on the information in the publication, and
  - (b) at a time when, and in circumstances in which, it was reasonable for him to rely on that information.
- (6) Except as mentioned in paragraph (8)—
- (a) the issuer is not subject to any other liability than that provided for by this Regulation in respect of loss suffered as a result of reliance by any person on—
    - (i) an untrue or misleading statement in a publication to which this Regulation applies, or
    - (ii) the omission from any such publication of any matter required to be included in it, and
  - (b) a person other than the issuer is not subject to any liability, other than to the issuer, in respect of any such loss.
- (7) Any reference in paragraph (6) to a person being subject to a liability includes a reference to another person being entitled as against him or her to be granted any civil remedy or to rescind or repudiate an agreement.
- (8) This Regulation does not affect—
- (a) liability to be the subject of an administrative sanction; or

- (b) liability for a criminal offence.
- (9) For the purposes of this Regulation—
- (a) the following persons shall be regarded as persons discharging managerial responsibilities in relation to a publication—
    - (i) any director of the issuer (or person occupying the position of director, by whatever name called),
    - (ii) in the case of an issuer whose affairs are managed by its members, any member of the issuer,
    - (iii) in the case of an issuer that has no persons falling within clause (i) or (ii), any senior executive of the issuer having responsibilities in relation to the publication;
  - (b) references to the acquisition by a person of securities include references to his or her contracting to acquire them or any interest in them.

## PART 5

### ON-GOING INFORMATION ABOUT MAJOR SHAREHOLDINGS

#### *Application of Part 5.*

13. This Part applies to an issuer:

- (a) whose shares are admitted to trading on a regulated market; and
- (b) whose home Member State is the State.

#### *Notification of acquisition or disposal of major shareholdings.*

14. (1) A person shall notify the issuer of the percentage of voting rights he or she holds if, as a result of either or both of the events specified in paragraph (2), the percentage of voting rights which he or she holds reaches, exceeds or falls below one or more of the percentages specified in paragraph (4).

(2) The events referred to in paragraph (1) are:

- (a) the acquisition or disposal by the person referred to in that paragraph of shares in the issuer, being shares to which voting rights attach;
- (b) events changing the breakdown of voting rights and on the basis of information disclosed by the issuer in accordance with Regulation 20.

(3) In the case of an issuer that is not incorporated in a Member State, subparagraph (b) of paragraph (2) also applies in circumstances where events equivalent to the events specified in that subparagraph occur and on the basis of equivalent disclosed information to that mentioned in that subparagraph.

(4) The percentages referred to in paragraph (1) are: 5%, 10%, 15%, 20%, 30%, 50% and 75%, each being a percentage of the total voting rights in the

issuer; each such percentage is subsequently referred to in this Part as a “threshold”.

(5) The following shall be disregarded for the purposes of determining whether a person has an obligation to make a notification under paragraph (1), namely, voting rights attaching to:

- (a) shares acquired for the sole purpose of clearing and settlement within a settlement cycle not exceeding the period beginning with the transaction and ending at the close of the third trading day following the day of the execution of the transaction (irrespective of whether the transaction is conducted on-exchange);
  - (b) shares held by a custodian (or nominee) in its custodian (or nominee) capacity provided such a person can only exercise the voting rights attached to such shares under instructions given in writing or by electronic means;
  - (c) shares held by a market maker acting in that capacity subject to the percentage of such shares not being equal to or in excess of 10% and subject to the market maker satisfying the criteria and complying with the conditions and operating requirements specified in paragraph (4);
  - (d) shares held by a credit institution or investment firm provided that:
    - (i) the shares are held within the trading book, as defined in Article 2(6) of Council Directive 93/6/EEC of 15 March 1993, of the credit institution or investment firm;
    - (ii) the voting rights attached to such shares do not exceed 5%; and
    - (iii) the credit institution, or as the case may be investment firm, ensures that the voting rights attached to shares in the trading book are not exercised or otherwise used to intervene in the management of the issuer,
  - (e) shares held by a collateral taker under a collateral transaction which involves the outright transfer of securities provided the collateral taker does not declare any intention of exercising (and does not exercise) the voting rights attaching to such shares,
  - (f) shares acquired by a borrower under a stock lending agreement as determined by rules of the Bank from time to time.
- (4) (a) References in paragraph (3) to a market maker are references to a market maker which—
- (i) is authorised by its home Member State under Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004, and

- (ii) does not intervene in the management of the issuer concerned, and does not exert any influence on the issuer to buy such shares or back the share price.
- (b) A market maker relying upon the exemption for shares held by it in that capacity must notify the competent authority which regulates it in respect of such activities, at the latest within the time limit provided for by Regulation 21(3), that it conducts or intends to conduct market making activities on a particular issuer and shall equally make such a notification to the relevant competent authority if it ceases to conduct market making activities on the issuer concerned.

*Acquisition or disposal of major proportions of voting rights.*

15. (1) The notification requirements under Regulation 14(1) shall also apply to a person to the extent the person is entitled to acquire, to dispose of, or to exercise voting rights in any of the following cases or a combination of them:

- (a) voting rights held by a third party with whom that person has concluded an agreement, which obliges them to adopt, by concerted exercise of the voting rights they hold, a long-term common policy towards the management of the issuer in question;
- (b) voting rights held by a third party under an agreement concluded with that person providing for the temporary transfer for consideration of the voting rights in question;
- (c) voting rights attaching to shares that are lodged as collateral with that person provided the person controls the voting rights and declares an intention to exercise them;
- (d) voting rights attaching to shares in which that person has a life interest;
- (e) voting rights that are held, or may be exercised within the meaning of subparagraphs (a) to (d), by an undertaking controlled by that person;
- (f) voting rights attaching to shares deposited with that person which the person has a discretion to exercise in the absence of specific instructions from the shareholders;
- (g) voting rights held by a third party in the third party's own name on behalf of that person;
- (h) voting rights which that person may exercise as a proxy where the person has a discretion to exercise the voting rights in the absence of specific instructions from the shareholders.

*Non-application of Regulations 14(1) and 15(1)(c) in certain cases.*

16. Regulations 14(1) and 15(1)(c) shall not apply in respect of voting rights attaching to shares provided to or by members of the European System of Central Banks in carrying out their functions as monetary authorities, including

shares provided to or by such members under pledge or repurchase or similar agreement for liquidity granted for monetary policy purposes or within a payment system provided:

- (a) the exemption under this Regulation shall apply only for a short period following the provision of the shares; and
- (b) the voting rights attached to the shares during this period are not exercised.

*Notification of voting rights arising from holding of certain financial instruments.*

17. (1) The notification requirements under Regulation 14(1) shall also apply to a person who holds, directly or indirectly, financial instruments which result in an entitlement to acquire, on such holder's own initiative alone, under a formal agreement, shares to which voting rights are attached, already issued, of an issuer.

(2) (a) Transferable securities and options, futures, swaps, forward rate agreements and any other derivative contracts, as referred to in Section C of Annex 1 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004, shall be considered to be financial instruments falling within paragraph (1) provided that the condition specified in subparagraph (b) is complied with and they result in an entitlement to acquire, on the holder's own initiative alone, under a formal agreement, shares to which voting rights are attached, already issued, of an issuer.

(b) The condition referred to in subparagraph (a) is that the instrument holder must enjoy, on maturity, either the unconditional right to acquire the underlying shares or the discretion as to his or her right to acquire such shares or not.

(3) In this Regulation "formal agreement" means an agreement that is binding under applicable law.

(4) For the purpose of paragraph (1) the holder of financial instruments falling within that paragraph is required to aggregate and, if necessary, notify all such instruments as relate to the same underlying issuer.

*Aggregation of managed holdings.*

18. (1) (a) The parent undertaking of a management company shall not be required to aggregate its holdings with the holdings managed by the management company under the conditions laid down in Council Directive 85/611/EC of 20 December 1985, provided such management company exercises its voting rights independently from the parent undertaking.

(b) But the requirement for the aggregation of holdings under Regulation 17(4) applies if the parent undertaking, or another controlled undertaking of the parent undertaking, has invested in holdings managed by such management company and the management company has no

discretion to exercise the voting rights attached to such holdings and may only exercise such voting rights under direct or indirect instructions from the parent or another controlled undertaking of the parent undertaking.

(2) (a) The parent undertaking of an investment firm authorised under Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 shall not be required to aggregate its holdings under Regulations 14 and 15 with the holdings which such investment firm manages on a client-by-client basis within the meaning of Article 4(1), point 9, of that Directive, provided that:

(i) the investment firm is authorised to provide such portfolio management under point 4 of Section A of Annex 1 to that Directive;

(ii) it may only exercise the voting rights attached to such shares under instructions given in writing or by electronic means or it ensures that individual portfolio management services are conducted independently of any other services under conditions equivalent to those provided for under Council Directive 85/611/EEC of 20 December 1985 by putting into place appropriate mechanisms; and

(iii) the investment firm exercises its voting rights independently from the parent undertaking.

(b) But the requirement for the aggregation of holdings shall apply if the parent undertaking, or another controlled undertaking of the parent undertaking, has invested in holdings managed by such investment firm and the investment firm has no discretion to exercise the voting rights attached to such holdings and may only exercise such voting rights under direct or indirect instructions from the parent or another controlled undertaking of the parent undertaking.

(3) For the purposes of the exemption in relation to the aggregation of holdings provided by paragraph (1) or (2), a parent undertaking of a management company or of an investment firm shall comply with the following conditions:

(a) it shall not interfere by giving direct or indirect instructions or in any other way in the exercise of the voting rights held by the management company or investment firm;

(b) that management company or investment firm must be free to exercise, independently of the parent undertaking, the voting rights attached to the assets it manages.

(4) A parent undertaking which wishes to make use of either of the foregoing exemptions shall (in relation to shares which are admitted to trading on a regulated market) without delay, notify the following to the competent authority of the home Member State of issuers whose voting rights are attached to holdings managed by the management companies or investment firms:

- (a) a list of the names of those management companies and investment firms, indicating the competent authorities that supervise them or that no competent authority supervises them, but with no reference to the issuers concerned;
- (b) a statement that, in the case of each such management company or investment firm, the parent undertaking complies with the conditions specified in paragraph (3).

(5) The parent undertaking shall update the list referred to in paragraph (4) on an ongoing basis.

(6) Where the parent undertaking intends to benefit from either of the foregoing exemptions only in relation to the financial instruments referred to in Regulation 17, it shall (in relation to financial instruments giving an entitlement to acquire shares which are admitted to trading on a regulated market) notify to the competent authority of the home Member State of the issuer only the list referred to in paragraph (4).

(7) Without prejudice to Part 9, a parent undertaking of a management company or of an investment firm shall (in relation to shares which are admitted to trading on a regulated market) be able to demonstrate to the competent authority of the home Member State of the issuer on request that:

- (a) the organisational structures of the parent undertaking and the management company or investment firm are such that the voting rights are exercised independently of the parent undertaking;
- (b) the persons who decide how the voting rights are exercised are not the same for the parent undertaking and the management company or investment firm and act independently;
- (c) if the parent undertaking is a client of its management company or investment firm or has a holding in the assets managed by the management company or investment firm, there is a clear written mandate for an arms-length customer relationship between the parent undertaking and the management company or investment firm.

(8) Paragraph (7)(a) shall be construed as requiring, as a minimum, that the parent undertaking and the management company or investment firm shall have established written policies and procedures reasonably designed to prevent the distribution of information between the parent undertaking and the management company or investment firm in relation to the exercise of voting rights.

(9) For the purposes of paragraph (3)—

“direct instruction” means any instruction given by the parent undertaking, or another controlled undertaking of the parent undertaking, specifying how the voting rights are to be exercised by the management company or investment firm in particular cases;

“indirect instruction” means any general or particular instruction, regardless of the form, given by the parent undertaking, or another controlled undertaking of the parent undertaking, that limits the discretion of the management company or investment firm in relation to the exercise of voting rights in order to serve specific business interests of the parent undertaking or another controlled undertaking of the parent undertaking.

(10) An undertaking whose registered office is in a third country which would have required authorisation in accordance with Article 5 (1) of Council Directive 85/611/EEC of 20 December 1985 or with regard to portfolio management under point 4 of section A of Annex 1 to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 if it had its registered office or, only in the case of an investment firm, its head office within the Community, shall be exempted from aggregating holdings with the holdings of its parent undertaking under paragraphs (1) and (2) provided that it complies with equivalent conditions of independence as management companies or investment firms.

(11) A third country shall be deemed to set conditions of independence equivalent to those specified in paragraphs (1) and (2) where, under the law of that country, a management company or investment firm as referred to in paragraph (10) is required to meet the following conditions:

- (a) the management company or investment firm shall be free in all situations to exercise, independently of its parent undertaking, the voting rights attached to the assets it manages;
- (b) the management company or investment firm shall disregard the interests of the parent undertaking or of any other controlled undertaking of the parent undertaking whenever conflicts of interest arise.

(12) A parent undertaking of a third country undertaking shall comply with the notification requirements under paragraphs (4)(a) and (6) and in addition:

- (a) shall make a statement that in respect of each management company or investment firm concerned, the parent undertaking complies with the conditions of independence specified in paragraph (1);and
- (b) without prejudice to Article 24 of the Directive, shall be able to demonstrate to the competent authority of the home Member State of the issuer on request that the requirements of paragraph (7) are complied with.

*Acquisition or disposal by issuer of shares.*

19. (1) An issuer of shares shall, if it acquires or disposes of its own shares, either itself or through a person acting in his or her own name but on the issuer’s behalf, make public the percentage of voting rights attributable to those shares as soon as possible, but not later than 4 trading days following such acquisition or disposal, where that percentage reaches, exceeds or falls below either or both of the following thresholds, namely, the thresholds of 5% or 10% of the voting rights.



(2) The percentage shall be calculated on the basis of the total number of shares to which voting rights are attached.

*Disclosure by issuer.*

20. (1) An issuer shall, at the end of each calendar month during which an increase or decrease of such total number has occurred, disclose to the public—

- (a) the total number of voting rights and capital in respect of each class of share that it issues,
- (b) the total number of voting rights attaching to shares of the issuer that are held as treasury shares.

(2) Responsibility for all information drawn up and made public in accordance with paragraph (1) shall lie with the issuer.

*Procedures for notification and disclosure of major holdings.*

21. (1) A notification required under Regulations 14(1) and 15 shall include the following information:

- (a) the resulting situation in terms of voting rights;
  - (b) the chain of controlled undertakings through which voting rights are effectively held, if applicable;
  - (c) the date on which the threshold was reached or crossed; and
  - (d) the identity of the shareholder even if that shareholder is not entitled to exercise voting rights under the conditions specified in Regulation 15 and of the person entitled to exercise voting rights on behalf of that shareholder.
- (2) (a) A notification required under Regulation 17(1) arising from the holding of financial instruments shall include the following information:
- (i) the resulting situation in terms of voting rights;
  - (ii) if applicable, the chain of controlled undertakings through which financial instruments are effectively held;
  - (iii) the date on which the threshold was reached or crossed;
  - (iv) for instruments with an exercise period, an indication of the date or time period where shares will or can be acquired, if applicable;
  - (v) date of maturity or expiration of the instrument;
  - (vi) identity of the holder; and
  - (vii) name of the underlying issuer.

- (b) The notification shall be made to the issuer of each of the underlying shares to which the financial instrument relates and, in the case of shares admitted to trading on a regulated market, to each competent authority of the home Member States of such issuers.
  - (c) If a financial instrument relates to more than one underlying share, a separate notification shall be made to each issuer of the underlying shares.
- (3) (a) The notification to the issuer shall be effected as soon as possible, but not later than 4 trading days, the first of which shall be the day after the date on which the shareholder or the person referred to in Regulation 15—
- (i) learns of the acquisition or disposal or of the possibility of exercising voting rights, or on which, having regard to the circumstances, should have learned of it, regardless of the date on which the acquisition, disposal or possibility of exercising voting rights takes effect; or
  - (ii) is informed about the event specified in Regulation 14(2)(b).
- (b) For the purposes of subparagraph (a), the shareholder, or the person referred to in Regulation 15, shall be deemed to have knowledge of the acquisition, disposal or possibility to exercise voting rights no later than 2 trading days following the transaction.
- (4) (a) For the purposes of paragraph (3), the notification obligation which arises as soon as the proportion of voting rights held reaches, exceeds or falls below the applicable thresholds following transactions of the type referred to in Regulation 15 shall be an individual obligation incumbent upon each shareholder, or each person as referred to in Regulation 15, or both in case the proportion of voting rights held by each party reaches, exceeds or falls below the applicable threshold.
- (b) In the circumstances referred to in Regulation 15(1)(a), the notification obligation shall be a collective obligation shared by all parties to the agreement.
- (c) In the circumstances referred to in Regulation 15(1)(h) if a shareholder gives the proxy in relation to one shareholder meeting, notification may be made by means of a single notification when the proxy is given provided it is made clear in the notification what the resulting situation in terms of voting rights will be when the proxy may no longer exercise the voting rights discretion.
- (d) If in the circumstances referred to in Regulation 15(1)(h) the proxy holder receives one or several proxies in relation to one shareholder meeting, notification may be made by means of a single notification on or after the deadline for receiving proxies provided that it is made clear in the notification what the resulting situation in terms of voting

rights will be when the proxy may no longer exercise the voting rights at its discretion.

- (e) When the duty to make notification lies with more than one person, notification may be made by means of a single common notification but this subparagraph does not release any of those persons from their responsibilities in relation to the notification.

(5) An undertaking is not required to make a notification in accordance with paragraph (1) if, instead, it is made by its parent undertaking or, where the parent undertaking is itself a controlled undertaking, by its own parent undertaking.

(6) Voting rights shall be calculated on the basis of all the shares to which voting rights are attached even if the exercise of such rights is suspended and shall be given in respect of all shares which are in the same class to which voting rights are attached.

(7) The number of voting rights to be considered when calculating whether a threshold is reached, exceeded or fallen below shall be the number of voting rights in existence according to the issuer's most recent disclosure made in accordance with Regulation 20(1)(a) but disregarding voting rights attached to any treasury shares held by the issuer (in accordance with the issuer's most recent disclosure of such holdings).

- (8) (a) For the purposes of paragraphs (3) and (9) and Regulation 19, the calendar of trading days of the home Member State of the issuer shall apply.

- (b) The Bank shall publish in its Internet site the calendar of trading days applicable in the State for purposes of subparagraph (a).

(9) On receipt of the notification under paragraph (1), but no later than 3 trading days thereafter, the issuer shall make public all the information contained in the notification.

*Filing of information with competent authority.*

22. A person making a notification to an issuer in accordance with Regulation 14, 15, 17(1) or 21(1) shall, if the notification relates to shares admitted to trading on a regulated market, at the same time file a copy of such notification with the competent authority of the home Member State of the issuer.

*Use of electronic means for notifications and filing.*

23. Information filed with the Bank for the purposes of this Part shall be filed using electronic means.

*Third country issuers — equivalence.*

24. (1) Where the registered office of an issuer is in a third country, the Bank, subject to paragraphs (2) to (4), may exempt that issuer, in respect of which the State is the home Member State, from requirements under Regulations 19, 20 and 21(9) provided that the law of the third country in question lays down

equivalent requirements or such an issuer complies with requirements of the law of a third country that the Bank considers as equivalent.

(2) A third country shall be deemed to set requirements equivalent to those specified in Regulation 21(9) where, under the law of that country, the period of time within which an issuer whose registered office is in that third country must be notified of major holdings and within which it must disclose to the public those major holdings is in total equal to or shorter than 7 trading days.

(3) (a) A third country shall be deemed to set requirements equivalent to those specified in Regulation 19 where, under the law of that country, an issuer whose registered office is in that third country is required to comply with the following conditions:

(i) in the case of an issuer only allowed to hold up to a maximum of 5% of its own shares to which voting rights are attached, it must make a notification whenever that threshold is reached or crossed;

(ii) in the case of an issuer allowed to hold up to a maximum of between 5% and 10% of its own shares to which voting rights are attached, it must make a notification whenever a 5% threshold or that maximum threshold is reached or crossed;

(iii) in the case of an issuer allowed to hold more than 10% of its own shares to which voting rights are attached, it must make a notification whenever that 5% threshold or that 10% threshold is reached or crossed.

(b) Notification above the 10% threshold is not required for the foregoing purpose.

(4) An issuer whose registered office is in a third country shall be deemed to meet requirements equivalent to those specified in Regulation 20 provided that the issuer is required under the law of the third country to disclose to the public the total number of voting rights and capital within 30 calendar days after an increase or decrease of such total number has occurred.

(5) Notwithstanding that the Bank has, under this Regulation, exempted an issuer from requirements referred to in paragraph (1), the issuer shall comply with the requirements of Articles 19, 20 and 21 of the Directive (as implemented in the State by Parts 6 and 7) in respect of the information covered by the requirements laid down in the third country in question.

## PART 6

### CONTINUING OBLIGATIONS AND ACCESS TO INFORMATION

*Information requirements for issuers of shares and debt securities.*

25. (1) (a) Subject to Regulations 29 and 30, this Regulation applies in relation to an issuer whose home Member State is the State.

- (b) References in this Regulation to securities, shares and debt securities are references to such instruments as are admitted to trading on a regulated market.
- (2) (a) If an issuer of securities proposes to amend its instruments of incorporation, it must communicate the draft amendment to:
  - (i) the Bank, and
  - (ii) the regulated market on which its securities have been admitted to trading.
- (b) The communication referred to in subparagraph (a) shall be effected without delay but at the latest on the date of calling the general meeting which is to vote on, or be informed of, the amendment.
- (3) (a) An issuer of shares shall ensure equal treatment for all holders of shares who are in the same position.
- (b) An issuer of debt securities shall ensure that all holders of debt securities ranking *pari passu* are given equal treatment in respect of all the rights attaching to those debt securities.
- (4) An issuer of shares or debt securities shall ensure that all the facilities and information necessary to enable holders of shares or debt securities to exercise their rights are available in the home Member State and that the integrity of data is preserved.
- (5) (a) Shareholders and debt securities holders shall not be prevented from exercising their rights by proxy, subject to the law of the country in which the issuer is incorporated.
- (b) An issuer of shares or debt securities shall make available a proxy form, on paper or, where applicable, by electronic means to each person entitled to vote at a meeting of shareholders or a meeting of debt securities holders.
  - (c) The proxy form shall be made available either:
    - (i) together with the notice concerning the meeting; or
    - (ii) on request, after the announcement of the meeting.
- (6) An issuer of shares or debt securities shall designate, as its agent, a financial institution through which shareholders or debt securities holders may exercise their financial rights.
- (7) An issuer of shares or debt securities may use electronic means to convey information to shareholders or debt securities holders.
- (8) To use electronic means to convey information to holders, an issuer shall comply with the following:

- (a) a decision to use electronic means to convey information to shareholders or debt securities holders shall be taken in a general meeting;
- (b) the use of electronic means shall not depend upon the location of the seat or residence of:
  - (i) the shareholder; or
  - (ii) persons referred to in subparagraphs (a) to (h) of Regulation 15(1); or
  - (iii) the debt security holder; or
  - (iv) a proxy representing a debt security holder;
- (c) identification arrangements shall be put in place so that the shareholders, debt security holders or other persons entitled to exercise or to direct the exercise of voting rights are effectively informed;
- (d) shareholders, debt security holders or persons referred to in subparagraphs (a) to (h) of Regulation 15(1) who are entitled to acquire, dispose of or exercise voting rights shall be:
  - (i) contacted in writing to request their consent for the use of electronic means for conveying information and, if they do not object within a reasonable period of time, their consent can be considered to have been given; and
  - (ii) able to request at any time in the future that information be conveyed in writing; and
- (e) any apportionment of the costs entailed in the conveyance of information by electronic means shall be determined by the issuer in compliance with the principle of equal treatment referred to in paragraph (3).

*Information about changes in rights attaching to securities.*

26. (1) An issuer of shares shall without delay disclose to the public any change in the rights attaching to its various classes of shares, including changes in the rights attaching to derivative securities issued by the issuer giving access to the shares of that issuer.

(2) An issuer of securities, other than shares admitted to trading on a regulated market, shall disclose to the public without delay any changes in the rights of holders of securities other than shares, including changes in the terms and conditions of such securities which could indirectly affect those rights, resulting in particular from a change in loan terms or in interest rates.

(3) An issuer of securities admitted to trading on a regulated market (other than an issuer which is a public international body of which at least one Member

State is a member) shall disclose to the public without delay any new loan issues and in particular any guarantee or security in respect of such issues.

*Information about meetings, issue of new shares and payment of dividends — share issuers.*

27. (1) An issuer of shares shall provide information to holders on:

- (a) the place, time and agenda of meetings;
- (b) the total number of shares and voting rights; and
- (c) the rights of holders to participate in meetings.

(2) An issuer of shares shall publish notices or distribute circulars concerning the allocation and payment of dividends and the issue of new shares, including information on any arrangements for allotment, subscription, cancellation or conversion.

*Information about meetings, and payment of interest — debt security issuers.*

28. (1) An issuer of debt securities shall publish notices or distribute circulars concerning:

- (a) the place, time and agenda of meetings of debt securities holders;
- (b) the payment of interest;
- (c) the exercise of any conversion, exchange, subscription or cancellation rights and repayment; and
- (d) the rights of holders to exercise their rights in relation to the matters mentioned in subparagraphs (a) to (c).

(2) If only holders of debt securities whose denomination per unit amounts to at least €50,000 (or an equivalent amount) are to be invited to a meeting, the issuer may choose as a venue any Member State, provided that all the facilities and information necessary to enable such holders to exercise their rights are made available in that Member State.

*State, regional and local authority exemption.*

29. A State, regional or local authority with securities admitted to trading on a regulated market is not required to comply with the following:

- (a) Regulations 25(4) to (7) and 26(3) in so far as those provisions relate to debt securities, and
- (b) Regulation 28(1) and (2).

*Third country equivalence.*

30. (1) Where—

- (a) the registered office of an issuer is in a third country, and

- (b) that issuer is an issuer in respect of which the State is the home Member State,

the Bank, subject to paragraph (2), may exempt that issuer from requirements under Regulations 25(3) to 28(2), provided that the law of the third country in question lays down equivalent requirements or such an issuer complies with requirements of the law of a third country that the Bank considers as equivalent.

(2) A third country shall be deemed to set requirements equivalent to those set out in Articles 17(2) (a) and 18(2) (a) of the Directive, as far as the content of the information about meetings is concerned, where, under the law of that country, an issuer whose registered office is in that third country is required to provide at least information on the place, time and agenda of meetings.

(3) Notwithstanding that the Bank has, under this Regulation, exempted an issuer from requirements referred to in paragraph (1), the issuer shall comply with the requirements of Articles 19, 20 and 21 of the Directive (as implemented in the State by this Part and Part 7) in respect of the information covered by the requirements laid down in the third country in question.

*Filing of information with Bank.*

31. (1) This Regulation applies to:

- (a) an issuer:
- (i) whose securities are admitted to trading on a regulated market; and
  - (ii) whose home Member State is the State; and
- (b) a person who has requested, without the issuer's consent, the admission of its securities to trading on a regulated market.

(2) An issuer or person referred to in paragraph (1) that discloses regulated information shall, at the same time, file that information with the Bank.

*Use of languages.*

32. (1) Subject to paragraph (6), if securities are admitted to trading only on a regulated market in the State and the State is the home Member State, regulated information shall be disclosed in a language accepted by the Bank.

(2) Subject to paragraph (6), if securities are admitted to trading in more than one Member State including the State and the State is the home Member State regulated information shall be disclosed:

- (a) in a language accepted by the Bank; and
- (b) either in a language accepted by the competent authorities of each host Member State or in a language customary in the sphere of international finance, at the election of the issuer.



- (3) (a) Subject to paragraph (6), if securities are admitted to trading in one or more Member States excluding the State and the State is the home Member State, regulated information shall be disclosed either:
- (i) in a language accepted by the competent authorities of those host Member States; or
  - (ii) in a language customary in the sphere of international finance, at the election of the issuer.
- (b) In addition, where the State is the home Member State, regulated information shall be disclosed in a language accepted by the Bank or in another language customary in the sphere of international finance, at the election of the issuer.
- (4) Subject to paragraph (6), if securities are admitted to trading on a regulated market without the issuer's consent:
- (a) paragraphs (1) to (3) shall not apply to the issuer; and
  - (b) paragraphs (1) to (3) shall apply to the person who has requested such admission without the issuer's consent.
- (5) Shareholders and a person referred to in Regulations 14, 15 and 17 shall be permitted to notify information to an issuer under these Regulations and transparency (regulated markets) law only in a language customary in the sphere of international finance. If an issuer receives such a notification, the Bank may not require the issuer to provide a translation into a language accepted by it.
- (6) If securities whose denomination per unit amounts to at least €50,000 (or an equivalent amount) are admitted to trading on a regulated market in the State or in one or more Member States, regulated information shall be disclosed to the public in either a language accepted by the competent authorities of the home Member State and host Member States or in a language customary in the sphere of international finance, at the election of the issuer or of the person who, without the issuer's consent, has requested such admission.
- (7) If an action concerning the content of regulated information is brought before a court or tribunal in the State, responsibility for the payment of costs incurred in the translation of that information for the purposes of the proceedings shall be in accordance with the law of the State.
- (8) For the purposes of this Regulation "a language customary in the sphere of international finance" includes the English language.

## PART 7

## DISSEMINATION OF INFORMATION

33. (1) This Regulation applies to:

(a) an issuer:

(i) whose securities are admitted to trading on a regulated market;  
and

(ii) whose home Member State is the State;

(b) a person who has applied, without the issuer's consent, for the admission of its securities to trading on a regulated market; and

(c) securities that are admitted to trading only on a regulated market in the State which is the host Member State and not in the home Member State.

(2) An issuer referred to in paragraph (1)(a), a person referred to in paragraph (1)(b) ("other person") or an issuer of securities referred to in paragraph (1)(c) shall disclose regulated information in the manner specified in paragraphs (3) to (8).

(3) When disseminating regulated information an issuer or other person shall ensure that the minimum standards specified in paragraphs (4) to (8) are complied with.

(4) Regulated information shall be disseminated in a manner ensuring that it is capable of being disseminated to as wide a public as possible, and as close to simultaneously as possible in the home Member State, and in other Member States.

(5) (a) Regulated information, other than regulated information referred to in subparagraph (b), shall be communicated to the media in unedited full text.

(b) (i) An annual financial report that is required by Regulation 4 to be made public is not required to be communicated to the media in unedited full text except for the information referred to in clause (ii).

(ii) If information is of a type that would be required to be disseminated in a half-yearly financial report then information of such a type that is contained in an annual financial report shall be communicated to the media in unedited full text.

(c) The announcement relating to the publication of the following regulated information shall include an indication of the website on which the relevant documents are available:

- (i) an annual financial report that is required by Regulation 4 to be made public;
- (ii) a half-yearly financial report that is required by Regulation 6 to be made public; and
- (iii) an interim management statement that is required by Regulation 9 to be made public or an equivalent quarterly financial report.

(6) Regulated information shall be communicated to the media in a manner which ensures the security of the communication, minimises the risk of data corruption and unauthorised access, and provides certainty as to the source of the regulated information. Security of receipt shall be ensured by remedying as soon as possible any failure or disruption in the communication of regulated information. An issuer or other person shall not be responsible for systemic errors or shortcomings in the media to which the regulated information has been communicated.

(7) Regulated information shall be communicated to a RIS in a way which:

- (a) makes clear that the information is regulated information;
- (b) identifies clearly:
  - (i) the issuer concerned;
  - (ii) the subject matter of the regulated information; and
  - (iii) the time and date of the communication of the regulated information by the issuer or other person.

(8) Upon request, an issuer or other person shall be able to communicate to the Bank, in relation to any disclosure of regulated information:

- (a) the name of the person who communicated the regulated information to the RIS;
- (b) the security validation details;
- (c) the time and date on which the regulated information was communicated; and
- (d) the medium in which the regulated information was communicated; and
- (e) details of any embargo placed by the issuer on the regulated information, if applicable.

(9) An issuer or other person shall not charge investors any specific cost for providing regulated information.

*Disclosure of information in third country.*

34. (1) Information that is disclosed in a third country which may be of importance to the public in the Member States shall be disclosed in accordance with the provisions of Regulations 32 and 33.

(2) In addition, paragraph (1) applies to information that is not regulated information.

*Choice of home Member State and notifications by third country issuers.*

35. An issuer that chooses the State as its home Member State, by virtue of paragraph (b) of the definition of “home Member State” in Regulation 2(1), shall disclose that choice in accordance with this Part.

## PART 8

## COMPETENT AUTHORITIES

*Designation of Competent Authorities.*

36. (1) Subject to paragraph (2), the Bank is designated as the central competent administrative authority for purposes of the Directive and shall be responsible for carrying out the obligations provided for in the Directive and for ensuring that the provisions adopted pursuant to the Directive are applied.

(2) IAASA is designated as the competent authority for purposes of subparagraph (h) of Article 24(4) of the Directive and shall be responsible for carrying out the obligations provided for in that subparagraph and for ensuring that the provisions adopted pursuant to the Directive in respect thereof are applied.

(3) The Bank and IAASA shall each be independent in the performance of its functions under these Regulations.

*Delegation of functions.*

37. (1) The Bank may delegate to an approved stock exchange, subject to such conditions as the Bank specifies, any of the functions that it is obliged or authorised to perform under transparency (regulated markets) law or under the Directive other than the functions under Regulations 37, 39, 40, 53, 56, 57 and 58 and Parts 10 and 12.

(2) Any person to whom functions are delegated under paragraph (1) shall have, by virtue of the delegation, all such powers as are necessary to perform those functions.

(3) Any delegation of functions shall be in writing and specify the functions to be performed and the conditions subject to which they are to be performed.

(4) The conditions referred to in paragraph (3) shall include a provision obliging the stock exchange to whom a function or functions concerned are delegated to act and be organised in such a manner as to avoid conflicts of interest and so that information obtained from performing the function is not used unfairly or to prevent competition.

(5) A delegation under this Regulation shall not prevent the performance by the Bank of the function delegated.

(6) Notwithstanding any delegation under this Regulation, the final responsibility for supervising compliance with the applicable provisions of the Directive and of transparency (regulated markets) law shall be with the Bank.

(7) The Bank shall notify the Minister of any such delegation of a function promptly and of the conditions subject to which it has been delegated.

(8) Following such notification, the Minister shall inform the Commission and the competent authorities of other Member States designated pursuant to the Directive of any arrangements entered into with regard to the functions under this Regulation, including the conditions subject to which such functions are delegated.

(9) Where a function is delegated pursuant to this Regulation, then nothing in the Stock Exchange Act 1995 (No. 9 of 1995) shall prevent there being specified as a condition subject to which the function is to be performed a condition requiring the rules of the stock exchange concerned or an amendment thereof to be approved by the Bank in so far as they are relevant to the function delegated.

## PART 9

### POWERS OF COMPETENT AUTHORITIES

#### *Definitions.*

38. In this Part—

“authorised officer” means an authorised officer appointed under Regulation 53;

“person to whom these Regulations apply” means any relevant person or a market operator;

“records” means any book, document or any other written or printed material in any form including any information (including phone and data traffic records) stored, maintained or preserved by means of any mechanical or electronic device, whether or not stored, maintained or preserved in a legible form;

“relevant person” means an issuer or any other person (other than a market operator) on whom an obligation is imposed by these Regulations;

“relevant records” means records relating to the activities of persons to whom these Regulations apply;

“responsible authority” means:—

(a) the Chief Executive of—

(i) the Irish Financial Services Regulatory Authority or

(ii) IAASA, or

- (b) any person to whom the Chief Executive of either of those Authorities has delegated responsibility for appointing authorised persons.

*Powers of Bank.*

39. (1) The Bank shall have all the powers necessary for the performance of its functions under transparency (regulated markets) law or the Directive.

(2) The powers provided for in this Part in respect of the Bank shall not be exercised in a manner or for a purpose inconsistent with the Directive or these Regulations.

*Particular powers of Bank.*

40. (1) Without prejudice to—

- (a) the generality of Regulation 39, and  
(b) the subsequent provisions of this Regulation,

the Bank shall, in particular, have the power to:

- (i) require auditors, issuers, holders of shares or other financial instruments, or persons referred to in Regulation 14 or 17, and the persons that control them or are controlled by them, to provide information and documents to the Bank or delegate;
- (ii) require the issuer to disclose the information required under subparagraph (i) to the public by the means and within the time limits the Bank considers necessary;
- (iii) require managers of the issuers and of the holders of shares or other financial instruments, or of persons referred to in Regulation 14 or 17, to notify the information required under the Directive, or under transparency (regulated markets) law, and, if necessary, to provide further information and documents to the Bank or delegate;
- (iv) monitor that the issuer discloses timely information with the objective of ensuring effective and equal access to the public in all Member States where the securities are traded and take appropriate action if that is not the case;
- (v) make public the fact that an issuer, or a holder of shares or other financial instruments, or a person referred to in Regulation 14 or 17, is failing to comply with its or his or her obligations.

(2) The Bank may publish the information referred to in paragraph (1)(ii) of its own initiative in the event that the issuer or the persons that control it or are controlled by it, fail to do so and after having heard the issuer.

- (3) (a) This paragraph applies where the State is the home Member State in respect of an issuer admitted to trading on a regulated market.

- (b) Where this paragraph applies, the Bank may (by means of rules under section 22 of the Act of 2006) make—
- (i) the issuer,
  - (ii) the holder of shares, or
  - (iii) a person referred to in Regulation 15 or 17(1),
- subject to a requirement or requirements that is or are more stringent than a requirement or requirements specified in Part 2, 3, 5, 6 or 7.
- (c) In exercising the power under subparagraph (b), the Bank shall have regard to the interests of investors and to the public interest.
- (d) As soon as may be after it has exercised that power, the Bank shall notify, in writing, the Minister of the fact of its exercise and provide to the Minister such particulars in relation to that exercise as the Minister may request.

(4) The Bank shall arrange for the putting in place of at least one official mechanism for the central storage of regulated information in accordance with Article 21 of the Directive.

(5) The Bank shall have the following powers (by means of giving a direction under Regulation 56 in that behalf) for the purpose of regulating the disclosure of periodic and ongoing information about issuers whose securities are already admitted to trading on a regulated market and in respect of which the State is the home Member State:

- (a) suspend, or request the relevant regulated market to suspend, trading in securities for a maximum of 10 days at a time if it has reasonable grounds for suspecting that the provisions of the Directive or of transparency (regulated markets) law, have been infringed by the issuer;
- (b) prohibit trading on the relevant regulated market if it finds that the provisions of the Directive or of transparency (regulated markets) law have been infringed, or if it has reasonable grounds for suspecting that they would be infringed.

(6) The disclosure to the Bank by an auditor of any information, document, fact or decision on foot of a requirement made by the Bank under paragraph (1)(i) shall not be regarded as constituting a breach of any restriction on disclosure of information imposed by contract or by any law, regulation or administrative provision and shall not involve the auditor in liability of any kind.

*Other powers of Bank not prejudiced.*

41. The powers of the Bank under this Part are without prejudice to the powers of the Bank under any other Part of these Regulations or any other enactment.

*Functions of IAASA.*

42. (1) IAASA shall have all the powers necessary for the performance of its functions under Regulation 36(2).

(2) IAASA shall examine information drawn up pursuant to Regulations 4 to 8 by issuers whose home Member State is the State for the purpose of considering whether such information is in accordance with the relevant reporting framework.

(3) The powers provided for in this Part in respect of IAASA shall not be exercised in a manner or for a purpose inconsistent with the Directive or transparency (regulated markets) law.

*Particular powers of IAASA — supply of information.*

43. (1) Without prejudice to the generality of Regulation 42, IAASA shall, in particular, have the power to:

(a) require any of the following persons to produce any document in his or her possession or control and to make copies of such documents, or to provide any information or explanations that it may reasonably require, for the purpose of examining and reviewing information published pursuant to Regulations 4 to 8:

(i) an issuer;

(ii) any director, manager, officer or employee of an issuer;

(iii) any persons who control or are controlled by a person referred to in clause (i) or (ii);

(iv) any person discharging managerial responsibilities of the issuer;

(v) an auditor of an issuer;

(vi) any person who fell within any of clauses (i) to (v) at a time when the document or information required by IAASA was prepared or came into existence; and

(b) certify to the Court the refusal or failure of any person referred to in any of clauses (i) to (v) of subparagraph (a) to comply with a requirement made by IAASA pursuant to that subparagraph.

(2) The disclosure to IAASA by an auditor of any information, document, fact or decision on foot of a requirement made by IAASA under paragraph (1)(a) shall not be regarded as constituting a breach of any restriction on disclosure of information imposed by contract or by any law, regulation or administrative provision and shall not involve the auditor in liability of any kind.

*Further particular powers of IAASA — directions to issuers, etc.*

44. Where it appears to IAASA that there is, or may be, a failure by an issuer whose home Member State is the State to ensure that an annual financial report



published pursuant to Regulation 4 or a half-yearly financial report published pursuant to Regulation 5 complies with the relevant reporting framework, IAASA may give notice to the issuer and to the directors of such issuer specifying:

- (a) the matters in respect of which it appears to IAASA that the information fails to comply with the relevant reporting framework; and
- (b) a period of not less than 30 days within which the issuer shall either:
  - (i) provide IAASA with a written explanation of the information; or
  - (ii) prepare revised information;
- (c) that, in the absence of a written explanation under paragraph (b)(i) or the issuance of revised information under paragraph (b)(ii), IAASA may:
  - (i) give a direction requiring the issuer to revise the information in accordance with instructions of IAASA specified in the direction;
  - (ii) seek an order of confirmation from the Court of that direction issued by IAASA; and
  - (iii) recover its costs from the issuer;
- (d) that, in the event that IAASA seeks an order of the Court to enforce its direction, IAASA may publish notice of such application in such manner as it thinks fit.

*Provisions consequent on issuer's response to notice under Regulation 44.*

45. (1) If, at or before the end of the period specified in the notice under Regulation 44 in accordance with paragraph (b) thereof, or such longer period as IAASA may permit, the issuer prepares revised information as directed by IAASA in that notice, IAASA may, taking into account the circumstances of the matter, require the issuer to pay some or all of the costs IAASA incurred in examining the information published by such issuer and in performing its functions under these Regulations.

(2) If, at the end of the period specified in the notice under Regulation 44 in accordance with paragraph (b) thereof, or such longer period as IAASA may permit—

- (a) the issuer has not issued revised information; and
- (b) IAASA, having considered any explanations provided by the issuer or its directors or both and considered any information or documents or both provided by the issuer in response to requests from it, IAASA remains of the opinion that the information does not comply with the relevant reporting framework,

IAASA may give a direction to the issuer requiring the issuer or its directors or both to do one or more of the following:

- (i) revise the annual financial report or half-yearly financial report, as applicable, in accordance with instructions of IAASA specified in the direction;
  - (ii) publish the revised information in the same manner as required by Regulations 4 to 8 and to make any consequential amendments to the annual or interim financial reports published in accordance with instructions of IAASA specified in the direction;
  - (iii) publish notice of the direction given by IAASA under this paragraph in a format and containing such information as is specified by IAASA in the direction;
  - (iv) pay costs specified in the direction, being costs incurred by IAASA in examining and reviewing the financial reports.
- (3) A direction under paragraph (2) shall—
- (a) be in writing,
- and
- (b) specify the date from which it shall have effect and the period for which it shall have effect (which shall not exceed 12 months).

*Application to Court to set aside or vary direction under Regulation 45.*

46. An issuer or its directors or both may apply to the Court for, and the Court may, if it considers it appropriate to do so, grant, an order setting aside or varying a direction under Regulation 45. An application under this Regulation shall be made within 30 days after the notification of the direction or within such extended period as the Court allows.

*Enforcement of direction under Regulation 45.*

47. (1) IAASA may, as respects a direction under Regulation 45 which, in its opinion, has not been complied with, apply to the Court in a summary manner for such order as may be appropriate by way of enforcement of the direction and the Court may, as it thinks fit, on the hearing of the application, make or refuse to make an order providing for such relief.

(2) An application for an order under this Regulation shall be by motion, and the Court when considering the motion may make such interim or interlocutory order as it considers appropriate.

*Applications under Regulations 46 and 47: supplemental provisions.*

48. (1) An application under Regulation 46 may not be made if the direction concerned has been the subject of an order granted under Regulation 47 (but without prejudice to the right of a person to apply subsequently to the Court to have the order varied or discharged).

(2) The Court may direct the hearing together of applications made under Regulations 46 and 47 that relate to the same direction.

(3) The Court may, if it thinks fit, vary or discharge an order made under Regulation 47.

(4) An application under Regulation 46 or 47 may be heard otherwise than in public.

*Particular powers of Court on application to it under Regulation 47.*

49. (1) If satisfied, after hearing an application of IAASA pursuant to Regulation 47, that an issuer's annual or half-yearly financial report does not comply with the relevant reporting framework in whole or in part, the Court may make a declaration to that effect and may, by order, do one or more of the following:

- (a) require the issuer or its directors or both to revise the financial report at issue so that it complies with the relevant reporting framework;
- (b) give directions respecting one or more of the following:
  - (i) the auditing of the revised annual accounts;
  - (ii) the revision of any matter contained in any annual financial report or half-yearly financial report as appropriate;
  - (iii) the steps to be taken by the issuer or directors or both to bring the order of the Court to the notice of persons likely to rely on the information that was the subject of the declaration;
  - (iv) such other matters as the Court sees fit;
- (c) require the issuer or directors or both to pay the costs incurred by IAASA in performing its functions under Regulations 44 to 46 in relation to such issuer.

(2) For the purposes of making an order under paragraph (1), the Court may:

- (a) have regard to the extent to which any or all of the directors who approved the annual or half-yearly financial report that was the subject of the direction knew, or ought to have known, that it did not comply with the relevant reporting framework; and
- (b) exempt one or more directors from any order made under paragraph (1) or may order the payment of different amounts by different directors.

*Dissemination of court order.*

50. At the conclusion of proceedings before the Court, IAASA shall disseminate in such manner as it thinks fit:

- (a) a copy of the court order, or

- (b) notice that the application has failed or been withdrawn.

*Provisions in relation to revised annual and half-yearly financial reports.*

51. (1) Regulations 44, 45, 47, 48, 49 and 50 apply equally to revised annual financial reports and half-yearly financial reports, as applicable, in which case references to revised annual reports and half-yearly financial reports are to be construed as references to further revised annual financial reports and half-yearly financial reports.

(2) Where revised annual financial reports or half-yearly financial reports are prepared under any of the Regulations referred to in paragraph (1), then, subject to a direction given under Regulation 45 or any order of the Court made on foot of an application to it under Regulation 47, any provision of these Regulations or the Companies Acts respecting the preparation, auditing, circulation and disclosure of annual accounts applies with the necessary changes to the revised annual financial report or half-yearly financial report, as applicable.

*Supplemental provisions in relation to directions of IAASA.*

52. (1) IAASA may give a direction amending or revoking a direction given by it under Regulation 45(2) but this power may not be exercised—

- (a) if an order of the Court made on foot of an application to it under Regulation 47 is for the time being in force in relation to the direction, or
- (b) to extend the period specified in the direction for which it is to have effect.

(2) On the expiry of the period specified in a direction for which it is to have effect, IAASA may give another direction under these Regulations if it considers it necessary to do so, in like or different terms to the person concerned.

*Power to appoint authorised officers.*

53. (1) A responsible authority may, in writing—

- (a) authorise such and so many persons as the authority considers necessary to be authorised officers for the purposes of these Regulations, and
- (b) revoke any such authorisation.

(2) An appointment under paragraph (1)(a) may be for a specified or unspecified period.

(3) Every authorised officer shall—

- (a) be furnished with a certificate of his or her appointment as an authorised officer, and
- (b) when exercising a power under these Regulations of an authorised officer, produce the certificate, together with some form of personal

identification, if requested to do so by a person affected by the exercise of that power.

(4) An appointment under paragraph (1) of a person as an authorised officer ceases—

- (a) when the responsible authority concerned revokes the appointment,
- (b) the person dies or resigns from the appointment,
- (c) if the appointment is for a specified period, when the period ends,
- (d) if the person appointed is an officer of the Bank or IAASA, when the person ceases to be such an officer, or
- (e) if the person appointed is an officer of an approved stock exchange to which the Bank has delegated functions under Regulation 37, when the person ceases to be such an officer.

*Powers of authorised officers.*

54. (1) An authorised officer may, for the purpose of carrying out an investigation under this Part, do all or any of the following—

- (a) at all reasonable times enter any premises at which there are reasonable grounds to believe that there are any relevant records,
- (b) search and inspect the premises referred to in subparagraph (a) and any relevant records on the premises,
- (c) secure for later inspection the premises or any part of the premises in which relevant records are kept or in which the officer has reasonable grounds for believing the relevant records are kept,
- (d) require any person to whom these Regulations apply to produce to the officer relevant records, and if the information is in a non-legible form, to reproduce it in a legible form or to give to the officer such information as the officer reasonably requires in relation to entries in the relevant records,
- (e) inspect and take copies of relevant records inspected or produced under this Regulation (including, in the case of information in a non-legible form, a copy of all or part of the information in a permanent legible form),
- (f) remove and retain any of the relevant records inspected or produced under this Regulation for such period as may be reasonable to facilitate further examination,
- (g) require a person to give to the officer information (including information by way of a written report) that the officer reasonably requires

in relation to activities covered by these Regulations and to produce to the officer any relevant records that the person has or has access to,

(h) require a person by whom or on whose behalf data equipment is or has been used, or any person who has charge of, or is otherwise concerned with the operation of, the data equipment or any associated apparatus or material, to give the officer all reasonable assistance in relation thereto, and

(i) require a person to explain entries in any relevant records.

(2) An authorised officer shall not, except with the consent of the occupier, enter a private dwelling (other than a part of the dwelling used as a place of work) unless the officer has obtained a warrant from a judge of the District Court.

(3) Where any person from whom production of a relevant record is required claims a lien thereon, the production of it shall be without prejudice to the lien.

(4) The requirement to produce any relevant record or report or to provide information or assistance under this Regulation extends to—

(a) a liquidator or receiver of, or any person who is or has been an officer or employee or agent of, a person to whom these Regulations apply, or

(b) any other person who appears to the Bank or IAASA, as the case may be, or the authorised officer to have the relevant record or report in his or her possession or under his or her control or the ability to provide information or assistance, as the case may be.

(5) An authorised officer may, if the officer considers it necessary, be accompanied by a member of the Garda Síochána or by another authorised officer when exercising a power under this Part.

(6) A person shall not obstruct or interfere with an authorised officer in the exercise of his or her powers under this Regulation.

#### *Warrants.*

55. (1) When an authorised officer in the exercise of the authorised officer's powers under Regulation 54(1)—

(a) is prevented from entering any premises, or

(b) believes that there are relevant records in a private dwelling,

the authorised officer or the responsible authority by whom the authorised officer was appointed may apply to a judge of the District Court for a warrant under this Regulation authorising the entry by the authorised officer into the premises or the private dwelling, as the case may be.

(2) If on an application under paragraph (1) a judge of the District Court is satisfied, on the information of the applicant, that the authorised officer concerned—

- (a) has been prevented from entering any premises, or
- (b) has reasonable grounds for believing that there are relevant records in a private dwelling,

then the judge may issue a warrant under the judge's hand authorising the authorised officer, accompanied, if the judge considers it appropriate to so provide, by such number of members of the Garda Síochána as may be specified in the warrant, at any time within 4 weeks from the date of issue of the warrant, to enter, if need be by force, the premises or private dwelling and exercise any of the powers referred to in Regulation 54(1).

*Directions by Bank.*

56. (1) The Bank may give one or more of the directions specified in paragraph (2) if the Bank considers it necessary to do so in order to—

- (a) perform its functions under these Regulations or any other provision of transparency (regulated markets) law,
- (b) prevent any person from contravening or continuing to contravene a provision of these Regulations or any other provision of transparency (regulated markets) law, or
- (c) protect otherwise the interests of investors.

(2) Each of the following is a direction referred to in paragraph (1), namely a direction to a person—

- (a) to do or not to do anything that the Bank may require to be done or not to be done in exercise of its powers under Regulation 40,
- (b) not to dispose of or otherwise dissipate any assets or specified assets of the person or not to do any of those things save where specified conditions are complied with,
- (c) not to dispose of or otherwise dissipate any assets or specified assets the beneficial interest in which is vested in another person or persons or not to do any of those things save where specified conditions are complied with,
- (d) being a credit institution, not to make any payments from an account held with the institution by a specified person or persons save with the prior consent of the Bank,
- (e) not to accept, process or execute any subscription or order on behalf of a specified person,

- (f) not to carry on a business (whether on the person's behalf or another's behalf) in a specified manner or otherwise than in a specified manner,
  - (g) not to engage in any practice that contravenes a provision of these Regulations or any other provision of transparency (regulated markets) law,
  - (h) not to enter into transactions of a specified kind or not to enter into such transactions save to a specified extent or save where specified conditions are complied with,
  - (i) not to publish specified information,
  - (j) to publish or disseminate in a specified manner specified information in relation to disclosure requirements arising under the Directive.
- (3) A direction under this Regulation shall—
- (a) be in writing,
- and
- (b) specify the date from which it shall have effect and the period for which it shall have effect (which shall not exceed 12 months).
- (4) A person may apply to the Court for, and the Court may, if it considers it appropriate to do so, grant an order setting aside or varying a direction under this Regulation.
- (5) The Bank may, as respects a direction under this Regulation which, in its opinion has not been complied with or is unlikely to be complied with, (or, in the case of a direction referred to in paragraph (2)(b) or (c), irrespective of whether it is of that opinion) apply to the Court in a summary manner for such order as may be appropriate by way of enforcement of the direction and the Court may, as it thinks fit, on the hearing of the application, make or refuse to make an order providing for such relief.
- (6) An application for an order under paragraph (5) shall be by motion, and the Court when considering the motion may make such interim or interlocutory order as it considers appropriate.
- (7) An application under paragraph (4) may not be made if the direction concerned has been the subject of an order granted under paragraph (5) (but without prejudice to the right of a person, the subject of an order granted under paragraph (5), to apply subsequently to the Court to have the order varied or discharged).
- (8) The Court may direct the hearing together of applications made under paragraphs (4) and (5) that relate to the same direction.



(9) The Court may, if it thinks fit, vary or discharge an order made under paragraph (5).

(10) An application under paragraph (4) or (5) may be heard otherwise than in public.

(11) The Bank may give a direction amending or revoking a direction given by it under this Regulation but this power may not be exercised—

(a) if an order under paragraph (5) is for the time being in force in relation to the direction,

or

(b) to extend the period specified in the direction for which it is to have effect.

(12) On the expiry of the period specified in a direction for which it is to have effect, the Bank may give another direction under this Regulation (if it considers it necessary to do so on the grounds specified in paragraph (1)), in like or different terms, to the person concerned.

(13) The powers of the Bank under this Regulation are in addition to those conferred on it by any other enactment to give directions or impose conditions or requirements.

*Precautionary measures.*

57. In circumstances where the State is a host Member State and where the Bank or IAASA, as appropriate, finds or has grounds for suspecting that an issuer or the holder of shares or other financial instruments or the person referred to in Regulation 14 has contravened a provision of these Regulations or another provision of transparency (regulated markets) law, it shall refer those findings or the fact of those grounds' existence to the competent authority of the home Member State.

*Supplemental provision in relation to Regulation 57.*

58. (1) If, despite the measures taken by the competent authority of the home Member State in response to a referral of matters under Regulation 57 by the Bank or IAASA to it (whether because those measures are inadequate or otherwise) the contravention referred to in that Regulation still persists, the Bank or IAASA, as the case may be, after informing the competent authority of the home Member State, shall take all the appropriate measures within its power under these Regulations in order to protect investors.

(2) The Bank or IAASA, as the case may be, shall inform the Commission of any measures taken by it under paragraph (1) at the earliest opportunity.

*Privilege.*

59. Nothing in these Regulations shall compel the disclosure by any person of any information which he or she would, in the opinion of the Court, be entitled to refuse to produce on the grounds of legal professional privilege or

authorise the taking possession of any document containing such information which is in his or her possession.

## PART 10

### ADMINISTRATIVE SANCTIONS

*Interpretation (Part 10).*

60. (1) In this Part—

“adverse assessment” means an assessment in which the assessor has decided that the assessee is committing or has committed a prescribed contravention;

“assessee” means the person the subject of an assessment;

“assessment” means an assessment referred to in Regulation 61;

“assessor” means an assessor appointed under Regulation 61;

“prescribed contravention” means a contravention of—

- (a) these Regulations,
- (b) any obligation imposed by the Bank pursuant to a power exercised under these Regulations, or
- (c) any other provision of transparency (regulated markets) law;

“qualifying holding” means—

- (a) a direct or indirect holding of shares or other interest in a regulated financial service provider which represents 10% or more of the capital or the voting rights, or
- (b) a direct or indirect holding of shares or other interest in a regulated financial service provider which represents less than 10% of the capital or voting rights but which, in the opinion of the Bank, makes it possible to control or exercise a significant influence over the management of the regulated financial service provider;

“regulated financial service provider” has the same meaning as it has in section 2(1) of the Central Bank Act 1942 (No. 22 of 1942) as amended by section 2(g) of the Central Bank and Financial Services Authority of Ireland Act 2004 (No. 21 of 2004);

“sanction” means any sanction referred to in any of subparagraphs (a) to (f) of Regulation 67(1);

“specified sanctions”, in relation to an adverse assessment, means the sanction or sanctions referred to in Regulation 61(8) which may be imposed on the assessee.

(2) The provisions of this Part are made for the purposes of enabling the imposition of administrative sanctions.

*Bank may appoint assessor.*

61. (1) Where—

- (a) the Bank, in the performance of the functions assigned to it as central competent administrative authority under Regulation 36(1), has reason to suspect that a prescribed contravention is being committed or has been committed, the Bank may appoint, or
- (b) IAASA, in the performance of the functions assigned to it as competent authority under Regulation 36(2), has reason to suspect that a prescribed contravention is being committed or has been committed and requests the Bank to do so, the Bank shall appoint,

an assessor (or, if the Bank thinks fit to do so, more than one assessor) to conduct an assessment as to—

- (i) whether or not the assessee is committing or has committed the contravention, and
- (ii) if the assessor finds that the assessee is committing or has committed the contravention, the sanction or sanctions, if any, which the assessor considers are appropriate to be imposed on the assessee in respect of the contravention.

(2) The Bank may appoint an assessor who is not an officer, employee or official of the Bank and any such assessor so appointed is an agent of the Bank for the purpose of performing the functions of an assessor under this Part.

(3) The Bank shall provide the assessor with such administrative services (including technical and legal advice) as the Bank considers necessary to enable the assessor to perform the assessor's functions.

(4) The assessor shall, as soon as is practicable after the assessor's appointment as an assessor, give notice of the appointment to the assessee.

(5) The notice under paragraph (4) given to the assessee by the assessor shall contain—

- (a) a statement that the assessor is appointed by the Bank under this Regulation and, if the appointment has been made at the request of IAASA, shall specify that to be the case,
- (b) a statement in summary form of the grounds for conducting the assessment,
- (c) a statement that, within a reasonable time specified by the assessor in the notice, the assessee may—

- (i) make submissions in writing to the assessor, and
  - (ii) request the assessor to be permitted to make oral submissions about the matters to which the notice relates, and
- (d) a statement that the assessor shall conduct the assessment even if no submissions referred to in subparagraph (c) are made.
- (6) The assessor shall—
- (a) consider any submissions made by the assessee, and
  - (b) conduct such investigations relating to the assessment as the assessor considers appropriate before issuing the assessment.
- (7) The assessor shall issue the assessment to the Bank when the assessment is made and, if the appointment of the assessor has been made at the request of IAASA, the Bank shall, on receipt of the assessment, immediately transmit it to IAASA.
- (8) Where the assessor decides that a prescribed contravention is being committed or has been committed, the assessor shall ensure that the assessment includes—
- (a) a statement of the grounds upon which the assessor made the assessment that the assessee is committing or has committed the contravention,
  - (b) a statement in summary form of the evidence upon which the assessment is based, and
  - (c) a statement of the sanction or sanctions, if any, which the assessor considers are appropriate to be imposed on the assessee in respect of the contravention.
- (9) The appointment of an assessor may be for a specified or unspecified period.
- (10) Subject to Regulation 68(2), the assessment shall constitute the decision of the Bank, and references in this Part to an adverse assessment shall be construed accordingly.

*Revocation of appointment of assessor.*

62. (1) (a) Where the Bank is satisfied that the assessor has contravened paragraph (2) or is incapacitated, the Bank may revoke the appointment of the assessor at any time.
- (b) Where IAASA is satisfied that the assessor has contravened paragraph (2) or is incapacitated, it may request the Bank to revoke the appointment of the assessor and the Bank, on the making of such a

request, if it considers it appropriate to do so, shall revoke that appointment.

(2) The assessor (including a person proposed to be appointed as an assessor) shall—

- (a) disclose to the Bank, and, where appropriate, to IAASA for its information, any material interest that the assessor may have in any matter that may arise during the assessment,
- (b) disclose to the Bank, and where appropriate, to IAASA for its information, any actual or potential conflict of interest that the assessor may have in conducting an assessment,
- (c) not use any inside information (within the meaning of the Market Abuse (Directive 2003/6/EC) Regulations 2005 (S.I. No. 342 of 2005)) obtained during an assessment for any purpose other than the performance of the assessor's functions under this Part,
- (d) not engage in misconduct during the assessment,
- (e) perform the assessor's functions in accordance with the provisions of this Part, and
- (f) issue an assessment that is not contrary to law.

*Power to require witnesses to appear and give evidence.*

63. (1) The assessor may by notice given in or outside the State to a person require the person to do one or more of the following—

- (a) appear before the assessor to give evidence (including give evidence on oath),
- (b) produce documents specified in the notice which are in the person's custody or control,
- (c) for the purposes of subparagraph (a) or (b), attend before the assessor from day to day unless excused from attendance or released from further attendance by the assessor.

(2) The assessor may administer oaths for the purposes of the evidence referred to in paragraph (1)(a).

(3) A witness at a hearing before the assessor has the same liabilities, privileges and immunities as a witness before the Court.

(4) Where a person ("person concerned")—

- (a) fails to comply with a notice under paragraph (1),
- (b) threatens or insults the assessor or any witness or person required to attend before the assessor,

- (c) interrupts the proceedings of, or does not behave in an appropriate manner before, the assessor,
- (d) obstructs or attempts to obstruct the assessor,
- (e) discloses, or authorises the disclosure of, evidence given before the assessor or any of the contents of a document produced to the assessor that the assessor has instructed not to be published, or
- (f) does anything else that, if the assessor were a court of law having power to commit for contempt, would be contempt for that court,

then

- (i) the assessor may apply to the Court for an order requiring the person concerned to do one or both of the following—
  - (I) to comply with the notice under paragraph (1),
  - (II) to discontinue or not repeat the behaviour falling within any of the provisions of subparagraphs (b) to (f), or behaviour of any similar kind, and
- (ii) the Court, if satisfied that there is no reasonable excuse for the failure to comply with the notice under paragraph (1) or for the behaviour concerned, as the case may be, grant the order and such other orders as it considers appropriate to ensure that the person concerned cooperates with the assessor.

*Referral to Court on question of law.*

- 64. (1) (a) The Bank or the assessor may (including at the request of the assessee) refer a question of law arising in the assessment to the Court for determination by the Court.
- (b) Without prejudice to paragraph (a), where the assessor has been appointed at the request of IAASA, the Bank may, at the request of IAASA, refer a question of law arising in the assessment to the Court for determination by the Court.
- (2) Where a question of law is referred under paragraph (1)—
  - (a) the assessor shall send to the Court all documents before him or her that are relevant to the matter in question, and
  - (b) at the end of the proceedings in the Court in relation to the reference, the Court shall cause the documents to be returned to the assessor.

*Assessee to be issued copy of any adverse assessment, etc.*

- 65. (1) Where the assessment of the assessor is that the assessee is committing or has committed a prescribed contravention, the Bank shall—

- (a) issue the assessee with a copy of the adverse assessment (or, as the Bank thinks fit, so much of the adverse assessment as constitutes the statements referred to in Regulation 61(8)) and provide a copy of the assessment to IAASA where the assessor has been appointed by the Bank at the request of IAASA, and
- (b) advise the assessee that—
  - (i) the assessee may appeal against the adverse assessment to the Court under Regulation 66, and
  - (ii) the Bank may apply to the Court under Regulation 70 for an order confirming the adverse assessment (including the specified sanctions).

(2) Where the assessment of the assessor is that the assessee is neither committing nor has committed a prescribed contravention, the Bank shall issue the assessee with a statement to that effect and, where the assessor has been appointed by the Bank at the request of IAASA, shall inform IAASA accordingly.

*Right of appeal against adverse assessment (including specified sanctions).*

66. (1) The assessee may appeal to the Court against the adverse assessment (including the specified sanctions) not later than 28 days after the Bank has complied with Regulation 65(1) in relation to the assessee or within such further period as the Court allows.

(2) An appeal under paragraph (1) may be heard otherwise than in public.

(3) The Court may, pending the hearing and determination of an appeal under paragraph (1), make such interim or interlocutory orders as the Court considers necessary in the circumstances.

(4) The Court shall determine an appeal under paragraph (1) by making—

- (a) an order confirming, varying or setting aside the adverse assessment (including the specified sanctions), whether in whole or in part, or
- (b) an order remitting the case to be decided again by the Bank in accordance with the directions of the Court.

(5) The determination of the Court on the hearing of an appeal under paragraph (1) shall be final, except that a party to the appeal may apply to the Supreme Court to review the determination on a question of law.

(6) For the avoidance of doubt, it is declared that no variation of an adverse assessment under paragraph (4)(a) may provide for the imposition of a sanction on the assessee which is not a sanction referred to in subparagraphs (a) to (f) of Regulation 67(1).

*Sanctions that may be imposed by Bank.*

67. (1) In the case of an adverse assessment, the Bank may impose on the assessee such of the following sanctions as are the specified sanctions—

- (a) a private caution or reprimand,
- (b) a public caution or reprimand,
- (c) subject to Regulation 72(2), a direction to pay to the Bank, or, if the assessor has been appointed by the Bank at the request of IAASA, to IAASA, a monetary penalty (but not exceeding €2,500,000 in any case),
- (d) a direction disqualifying the assessee from being concerned in the management of, or having a qualifying holding in, any regulated financial service provider for such time as is specified in the order,
- (e) if the assessee is continuing to commit a prescribed contravention, a direction ordering the assessee to cease committing the prescribed contravention,
- (f) a direction to pay to the Bank all or a specified part of the costs incurred by the Bank in investigating the matter to which the assessment relates and in holding the assessment (including any costs incurred by authorised officers).

(2) Where the assessor had been appointed by the Bank at the request of IAASA, the Bank shall consult with IAASA before exercising the powers under paragraph (1).

*Power to correct assessments.*

68. (1) Where the assessor or the Bank is satisfied that there is an obvious error in the text of an assessment, the assessor or the Bank, as the case may be, may alter the text of the assessment to remove the error.

(2) Where the text of an assessment is altered under paragraph (1), the text as so altered shall be taken to be the decision of the Bank under Regulation 61(10).

(3) In paragraph (1), “obvious error”, in relation to the text of an assessment, includes—

- (a) a clerical or typographical error,
- (b) an error arising from an accidental slip or omission, or
- (c) a defect of form.

*When specified sanctions take effect.*

69. (1) Where—

- (a) no appeal under Regulation 66 against the adverse assessment is lodged with the Court within the period for lodging the appeal, or



- (b) an appeal under Regulation 66 against the adverse assessment which has been lodged with the Court within the period for lodging the appeal is withdrawn or abandoned,

then the specified sanctions, as confirmed or varied in the order, if any, obtained under Regulation 70(3)(a), shall take effect on the date of that order or such other date as the Court may specify in that order.

(2) Where an appeal under Regulation 66 against the adverse assessment is lodged with the Court within the period for lodging the appeal, then the specified sanctions, as confirmed or varied in the order, if any, obtained under Regulation 66(4)(a), shall take effect on the date of that order or such other date as the Court may specify in that order.

*Enforcement of adverse assessment (including specified sanctions).*

70. (1) Where—

- (a) no appeal under Regulation 66 against the adverse assessment is lodged with the Court within the period for lodging the appeal, or
- (b) an appeal under Regulation 66 against the adverse assessment which has been lodged with the Court within the period for lodging the appeal is withdrawn or abandoned,

then, subject to paragraph (2), the Bank may apply to the Court for an order confirming the adverse assessment (including the specified sanctions).

(2) Where the assessor was appointed by the Bank at the request of IAASA, such an application shall not be made otherwise than at the request of IAASA but, if IAASA does make a request of the Bank to make such an application, it shall be the duty of the Bank to comply with that request.

(3) The Court shall determine an application under paragraph (1) by making—

- (a) an order confirming, varying or setting aside the adverse assessment (including the specified sanctions), whether in whole or in part, or
- (b) an order remitting the case to be decided again by the Bank in accordance with the directions of the Court.

(4) The Court shall not hear an application under paragraph (1) unless—

- (a) the assessee appears at the hearing as respondent to the application, or
- (b) if the assessee does not so appear, the Court is satisfied that a copy of the application has been served on the assessee.

(5) An application under paragraph (1) may be heard otherwise than in public.

(6) The Court may, on an application under paragraph (1), make such interim or interlocutory orders as the Court considers necessary in the circumstances.

(7) The determination of the Court on the hearing of an application under paragraph (1) shall be final, except that the Bank or the respondent, if any, may apply to the Supreme Court to review the determination on a question of law.

(8) For the avoidance of doubt, it is declared that no variation of an adverse assessment under paragraph (3)(a) may provide for the imposition of a sanction on the assessee which is not a sanction referred to in subparagraphs (a) to (f) of Regulation 67(1).

*Publication of certain specified sanctions.*

71. The Bank shall publicly disclose the specified sanctions referred to in subparagraphs (c) to (f) of Regulation 67(1), as confirmed or varied in the order concerned obtained under Regulation 66(4)(a) or 70(3)(a), that are imposed on the assessee unless the Bank considers that the disclosure would—

- (a) seriously jeopardise the financial markets, or
- (b) cause disproportionate damage to the parties involved.

*Person not liable to be penalised twice for same contravention.*

72. (1) Where—

- (a) a sanction referred to in Regulation 67(1)(c) is to be imposed on the assessee by virtue of an order obtained under Regulation 66(4)(a) or 70(3)(a), and
- (b) the acts which constitute the prescribed contravention to which the sanction relates also constitute an offence under a law of the State,

then the assessee is not, in respect of those acts, liable to be prosecuted or punished for that offence under that law.

(2) A sanction referred to in Regulation 67(1)(c) in respect of a prescribed contravention shall not be imposed on the assessee where—

- (a) the assessee has been found guilty or not guilty of having committed an offence under a provision of these Regulations, and
- (b) all or some of the acts constituting that offence also constitute the prescribed contravention.

*Person not to be concerned in management of regulated financial service provider while disqualified.*

73. A regulated financial service provider shall ensure that a person shall not be concerned in the management of, or have a qualifying holding in, the financial service provider while the person is subject to a sanction referred to in Regulation 67(1)(d) that is in force.

*Power of Bank or IAASA to resolve suspected contraventions, etc.*

74. (1) Where—

- (a) the Bank, in the performance of the functions assigned to it as central competent administrative authority under Regulation 36(1), has reason to suspect, or
- (b) IAASA, in the performance of the functions assigned to it as competent authority under Regulation 36(2), has reason to suspect,

that a person (“relevant party”) is committing or has committed a prescribed contravention, it may enter into an agreement in writing with the relevant party to resolve the matter (including at any time before an assessment, if any, has been issued in respect of the relevant party).

(2) An agreement entered into under paragraph (1)—

- (a) is binding on the Bank or IAASA, as the case may be, and the relevant party, and
- (b) may include terms under which the relevant party accepts the imposition of sanctions.

(3) An agreement entered into under paragraph (1) may be enforced by the Bank or IAASA, as the case may be, or the relevant party in a court of competent jurisdiction.

## PART 11

### CO-OPERATION BETWEEN COMPETENT AUTHORITIES

*Co-operation between Competent Authorities.*

75. (1) The Bank and IAASA shall each—

- (a) co-operate with the competent authorities of other Member States, designated under the Directive, whenever necessary, for the purpose of the performance by each of the competent authorities of the Member States (including the Bank or IAASA, as appropriate) of their functions and the making use of their powers (whether set out in the Directive, transparency(regulated markets)law or the measures for the time being adopted by another Member State to implement the Directive), and
- (b) render assistance to competent authorities of other Member States in the performance of their functions (whether set out in the Directive or the measures for the time being adopted by another Member State to implement the Directive).

(2) In particular and without prejudice to its obligations under section 33AK(10) of the Central Bank Act 1942, as amended, or section 31 of the Companies (Auditing and Accounting) Act 2003, as the case may be, nothing in any

law shall prevent the Bank or IAASA from exchanging confidential information. Information thus exchanged shall be covered by the obligation of professional secrecy to which the persons employed or formerly employed by the competent authorities receiving the information are subject.

(3) The Bank or IAASA may conclude, for their respective purposes, cooperation agreements with the competent authorities or bodies of third countries enabled by their respective legislation providing for the exchange of information so as to allow the carrying out of any of the tasks assigned by the Directive to the competent authorities in accordance with Article 24 of the Directive.

(4) Such an exchange of information—

(a) is subject to the authority with whom the information is exchanged guaranteeing that a level of professional secrecy at least equivalent to that referred to in Article 25 of the Directive shall apply to the information, and

(b) shall be intended for the performance of the supervisory task of the authorities or bodies mentioned in paragraph (3).

(5) Without prejudice to paragraph (4), where the information proposed to be exchanged originates in another Member State—

(a) it shall not be exchanged without the express consent of the competent authority which disclosed it in the first place, and

(b) if the purpose for which it was so disclosed was limited to any extent specified in that consent, shall be exchanged only for the purpose so specified.

## PART 12

### PENALTIES, GENERAL AND OTHER MISCELLANEOUS PROVISIONS

#### *Offences and penalties generally.*

76. (1) If the contravention in respect of which a person is convicted of an offence under another provision of this Regulation is continued after the conviction, the person shall be guilty of a further offence on every day on which the contravention continues.

(2) Where any offence is committed under another provision of this Regulation by a body corporate and is proved to have been committed with the consent, connivance or approval of or to have been attributable to the wilful neglect on the part of any person, being a director, manager, secretary or other officer of the body corporate or a person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and is liable to be proceeded against and punished as if he or she was guilty of the first mentioned offence.

(3) A person who contravenes Regulation 54(6) or 73 shall be guilty of an offence.

(4) A person who, knowing the information to be so false or misleading, or being reckless as to whether or not it is so false or misleading, discloses information in purported compliance with a requirement imposed on the person by or pursuant to these Regulations which is false or misleading in a material respect shall be guilty of an offence.

(5) A person who is guilty of—

(a) an offence under this Regulation other than an offence referred to in subparagraph (b),

or

(b) one or more further offences under paragraph (1), for each such offence,

shall be liable on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both.

(6) Every offence under this Regulation is an offence to which section 21 (penalties on indictment) of the Investment Funds, Companies and Miscellaneous Provisions Act 2006 applies.

*Annual report of Bank and IAASA.*

77. (1) The Bank shall provide the Minister with a copy of the extract relating to the performance of its functions under these Regulations from its annual report to the Minister for Finance under section 300 of the Central Bank Act 1942.

(2) IAASA shall give an account of the performance of its functions under these Regulations in its annual report under section 22 of the Companies (Auditing and Accounting) Act 2003.

*Fees and charges.*

78. (1) Fees shall be payable pursuant to section 33K of the Central Bank Act 1942 in respect of the performance by the Bank of its functions under these Regulations.

(2) IAASA may, for the purpose of defraying the expenses incurred by it in performing its functions under these Regulations, impose charges on issuers admitted to trading on a regulated market at such rates as are from time to time determined by it with the consent of the Minister.

(3) The Minister shall, where he or she considers it appropriate to do so, consult with any persons who are, in the Minister's opinion, interested in the matter before he or she consents to any determination by IAASA of rates of charges under paragraph (2).

(4) Charges imposed by IAASA under paragraph (2) shall be recoverable by IAASA from the person on whom they have been imposed as a simple contract debt in any court of competent jurisdiction.

*Transitional — provisions of a substantive nature.*

79. (1) (a) An issuer whose financial year begins on or after 20 January 2007 shall comply with Regulations 4 to 9 on and from 13th June 2007.
- (b) An issuer whose financial year begins before 20 January 2007 shall comply with Regulations 4 to 9 on and from the beginning of its next financial year.
- (2) (a) This paragraph applies to an issuer of debt securities which were admitted to trading on a regulated market in a Member State before 1 January 2005 if the home Member State had decided to allow such an issuer to benefit from the provisions of Article 27 of Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 at the point of admission of those securities.
- (b) For the financial years falling within the period for which this paragraph applies, such an issuer need not disclose its half-yearly financial report in accordance with Regulations 6 to 8.
- (c) This paragraph applies for the period of 10 years following 1 January 2005.
- (3) An issuer need not prepare its financial statements in accordance with Regulation 4(4) or 7(2) for any financial year beginning before 1 January 2007 if:
- (a) the issuer's registered office is in a third country; and
- (b) the issuer prepares its financial statements in accordance with internationally accepted standards.
- (4) (a) This paragraph applies to an issuer:
- (i) whose debt securities only are admitted to trading; and
- (ii) whose home Member State is the State.
- (b) Such an issuer is not required to disclose financial statements in accordance with Regulation 7(2)(a) for the financial year (and that financial year only) beginning on or after 1 January 2006.
- (5) (a) This paragraph applies to an issuer of debt securities:
- (i) that is incorporated in a third country ("the third country");
- (ii) whose home Member State is the State; and
- (iii) whose debt securities were admitted to trading in a Member State prior to 1 January 2005.

- (b) Such an issuer need not draw up its annual financial statements in accordance with Regulation 4(4) or its management report in accordance with Regulation 5 (3) if:
- (i) the annual financial statements prepared by issuers from the third country give a true and fair view of the issuer's assets and liabilities, financial position and results;
  - (ii) the third country has not made mandatory the application of accounting standards referred to in Article 2 of Regulation (EC) No.1606/2002 of the European Parliament and of the Council of 19 July 2002; and
  - (iii) the Commission has not taken any decision, in accordance with Article 23(4)(ii) of the Directive, as to whether there is an equivalence between IAS and IFRS and:
    - (I) the accounting standards laid down in the law, regulations or administrative provisions of the third country; or
    - (II) the accounting standards of a third country (not being that referred to in subparagraph (a)(i)) with which such an issuer has elected to comply.

(6) Prior to financial years starting on or after 1 January 2009, an issuer whose registered office is in a third country may prepare its annual consolidated financial statements and half-yearly consolidated financial statements in accordance with the accounting standards of a third country provided the Bank is satisfied that one of the conditions set out in Article 1 of Commission Decision 2006/891/EC of 4 December 2006 is complied with.

(7) Notwithstanding paragraph (3) of Regulation 21, a person who holds a percentage of voting rights in respect of which there is a notification requirement under these Regulations shall notify the issuer referred to in that paragraph (3), not later than 2 months after 13th June 2007, of the percentage of voting rights he or she holds at 13th June 2007, unless he or she has already made a notification of that percentage of those voting rights in accordance with Regulation 14(1) before that date.

(8) Notwithstanding Regulation 21(9), an issuer shall disclose, in accordance with these Regulations, information the subject of a notification referred to in paragraph (7) not later than 3 months after 13th June 2007.

*Transitional — construction of certain references.*

80. (1) References in these Regulations to a person authorised under Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 shall be read as including references to a person authorised under Council Directive 93/22/EEC of 10 May 1993.

(2) The reference in Regulation 18 to portfolio management under point 4 of Section A of Annex 1 to Directive 2004/39/EC of the European Parliament and

of the Council of 21 April 2004 shall be read as including a reference to the service of portfolio management under point 3 of Annex A of Council Directive 93/22/EEC of 10 May 1993.

(3) References in these Regulations to a regulated market shall be read as including references to a market as defined by point 13 of Article 1 of Council Directive 93/22/EEC of 10 May 1993.

*Relationship with Chapter 2 of Part IV of Companies Act 1990.*

81. The obligation of disclosure under Chapter 2 of Part IV of the Companies Act 1990 and the related provisions of that Chapter shall not apply to—

- (a) an acquisition or disposal of shares which is required to be notified under these Regulations, or
- (b) an acquisition or disposal of shares which, but for an express exemption provided by or under these Regulations (whether the word “exempted” is used or not), would be required to be notified under these Regulations.

L.S.

GIVEN under my hand,  
13 June 2007

---

Minister of State at the Department of Enterprise, Trade and Employment.



## EXPLANATORY NOTE

*(This note is not part of the instrument and does not purport to be a legal interpretation)*

These regulations along with Part 3 of the Investment Funds, Companies and Miscellaneous Provisions Act 2006 and certain rules which may be made by the competent authority (The Central Bank and Financial Services Authority of Ireland) under regulation 40(3) of the Regulations give effect to Directive 2004/109EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC.

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ón  
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,  
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2  
nó tríd an bpost ó  
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,  
51 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2  
(Teil: 01 - 6476834/35/36/37; Fax: 01 - 6476843)  
nó trí aon díoltóir leabhar.

---

DUBLIN  
PUBLISHED BY THE STATIONERY OFFICE  
To be purchased directly from the  
GOVERNMENT PUBLICATIONS SALE OFFICE  
SUN ALLIANCE HOUSE, MOLESWORTH STREET, DUBLIN 2  
or by mail order from  
GOVERNMENT PUBLICATIONS, POSTAL TRADE SECTION,  
51 ST. STEPHEN'S GREEN, DUBLIN 2  
(Tel: 01-6476834/35/36/37; Fax: 01-6476843)  
or through any bookseller.

---

€12.95

ISBN 1-4064-3190-7



9 781406 431902

Wt. (B25424). 285. 6/07. Cahill. Gr. 30-15.