



STATUTORY INSTRUMENTS

S.I. No. 773 of 2007

EUROPEAN COMMUNITIES (MARKETS IN FINANCIAL
INSTRUMENTS) (AMENDMENT) REGULATIONS (No. 2) 2007

(Prn. A7/2135)

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EUROPEAN COMMUNITIES (MARKETS IN FINANCIAL
INSTRUMENTS) (AMENDMENT) REGULATIONS (No. 2) 2007

I, BRIAN COWEN, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), as amended by the European Communities (Amendment) Act 1993 (No. 25 of 1993), for the purpose of giving effect to Directive 2004/39/EC, dated 21 April 2004, of the European Parliament and of the Council, as amended by Directive 2006/31/EC of 5 April 2006, and Directive 2006/73/EC of 10 August 2006, hereby make the following Regulations:

Citation and commencement

1. (1) These Regulations may be cited as the European Communities (Markets in Financial Instruments) (Amendment) Regulations (No. 2) 2007.

(2) These Regulations, the European Communities (Markets in Financial Instruments) (Amendment) Regulations No.1 2007 and the European Communities (Markets in Financial Instruments) Regulations may be cited together as the European Communities (Markets in Financial Instruments) Regulations 2007 (Nos. 1 to 3).

(3) These Regulations come into operation on the date these Regulations are made.

Amendment of Regulation 2

2. Regulation 2(2) of S.I. No. 60 of 2007 is amended by deleting “under these Regulations”.

Amendment of Regulation 3

3. Regulation 3 of S.I. No. 60 of 2007 is amended—

- (a) by deleting the definitions of “Directive” and “durable medium” and inserting the following immediately after the definition of “dealing in own account”:

“ ‘Directive’ means the Markets in Financial Instruments Directive 2004/39/EC of 21 April 2004;

‘distribution channels’ means channels through which information is, or is likely to become, publicly available;

‘durable medium’ means any instrument which—

- (a) enables a client to store information addressed personally to that client in a way accessible for future reference and for a period of time adequate for the purposes of the information, and

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 30th November, 2007.*

(b) allows the unchanged reproduction of the information stored;”, and

(b) by substituting the following for the definition of “relevant person”:

“ ‘relevant person’, in relation to an investment firm or a credit institution, means any of the following:

- (a) a director, partner or equivalent, manager or tied agent;
- (b) a director, partner or equivalent, or manager of any tied agent;
- (c) a natural person, including an employee of the firm, of the credit institution or of any tied agent—
 - (i) whose services are placed at the disposal, and under the control, of—
 - (I) the investment firm or its tied agent, or
 - (II) the credit institution or its tied agent, and
 - (ii) who is involved in the provision of investment services and activities;
- (d) a natural person who, under an outsourcing arrangement, is directly involved in the provision of services to—
 - (i) the investment firm or its tied agent, or
 - (ii) the credit institution or its tied agent;”

Amendment of Regulation 5

4. Regulation 5(1) of S.I. No. 60 of 2007 is amended—

(a) by substituting the following for subparagraph (c):

- “(c) persons who do not provide any investment services or activities other than dealing on own account, unless the persons—
- (i) are market makers, or
 - (ii) deal on own account outside—
 - (I) a regulated market, or
 - (I) an MTF,

on an organised, frequent and systematic basis by providing a system accessible to third parties in order to engage in dealings with them;”

(p) by substituting the following for subparagraph (p):

“(p) collective investment undertakings and pension funds whether coordinated at Community level or not and the depositories and managers of the collective investment undertakings;”

Amendment of Regulation 6

5. Regulation 6 of S.I. No. 60 of 2007 is amended—

(a) by substituting the following for paragraph (8):

“(8) Investment firms authorised by the competent authority of another Member State pursuant to Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field who have exercised their entitlements to—

- (a) provide services in the State, or
- (b) establish a branch in the State,

before 1 November 2007 are deemed for the purposes of that authorisation to be authorised by that competent authority for the purposes of the Directive, and are deemed to have complied with Article 31 or 32 of the Directive, and hence these Regulations.”

(b) by inserting the following paragraphs:

“(9) Regulations 76 to 101, 106, 108(1), 151 and 154(2) to (3) apply to an investment firm or a credit institution when it is providing investment services, or carrying on investment activities, in the State under the freedom to provide services, unless and until the home Member State of the investment firm or credit institution has fully transposed—

- (a) the Directive; and
- (b) Commission Directive No. 2006/73/EC of 10 August 2006,

into the law of that home Member State.

(10) Notwithstanding Regulation 7, a person that—

- (a) is an investment firm immediately before the day this Regulation comes into operation, and
- (b) is not, immediately before that day, deemed to be authorised under these Regulations,

may stand authorised, as of that day, as an authorised investment firm until the Bank, under Regulation 11 grants or refuses to grant an authorisation to the person to operate as an investment firm, provided that, no later than 3 months after that day, the person applies under that Regulation to the Bank for that authorisation.

(11) Pending a decision by the Bank to grant or refuse an authorisation referred to in paragraph (10), or during the 3 months referred to in that paragraph if the person does not within that time apply, as set out in that paragraph, the Bank may—

- (a) impose such conditions or requirements as it thinks fit relating to—
 - (i) the proper and orderly regulation and supervision of the investment firm, or
 - (ii) the protection of investors,
 including conditions or requirements respecting any associated or related undertaking of the person, or
- (b) issue directions under these Regulations.”

Amendment of Regulation 8

6. Regulation 8 of S.I. No. 60 of 2007 is amended by substituting the following for paragraph (1):

“(1) For the purposes of Regulation 7, an investment firm shall not be regarded as operating in the State if the firm has no branch in the State and—

- (a) the firm’s head or registered office is—
 - (i) in a state other than a Member State, or
 - (ii) in a Member State outside the State and the firm does not provide any investment services in respect of which it is required to be authorised in its home Member State for the purposes of the Directive, or
- (b) the firm is authorised in a Member State outside the State, under the Directive, but provides only investment services of a kind for which authorisation under the Directive is not available during the provision of the investment services.”

Amendment of Regulation 10.

7. Regulation 10 of S.I. No. 60 of 2007 is amended by inserting “and” at the end of paragraph (a), by substituting “.” for “, and” at the end of paragraph (b) and by deleting paragraph (c).

Amendment of Regulation 11.

8. Regulation 11 of S.I. No. 60 of 2007 is amended by renumbering paragraph (3A) as paragraph (2A).

Amendment of Regulation 20.

9. Regulation 20(1) of S.I. No. 60 of 2007 is amended by deleting “under Regulation 11(1)” and substituting “under Regulation 11(1) or the authorisation of a firm deemed authorised under Regulation 6(2)”.

Amendment of Regulation 40.

10. Regulation 40(6) of S.I. No. 60 of 2007 is amended by deleting “and other interested parties”.

Amendment of Regulation 43.

11. Regulation 43 of S.I. No. 60 of 2007 is amended by deleting paragraph (3).

Amendment of Regulation 61.

12. Regulation 61 of S.I. No. 60 of 2007 is amended by inserting the following paragraph:

“(7) The person or persons who effectively direct the business and the operations of an already authorised regulated market are deemed to be in compliance with paragraph (1).”

Amendment of Regulation 64.

13. The following is substituted for Regulation 64(5) of S.I. No. 60 of 2007:

“(5) A transferable security that has been admitted to trading on a regulated market may subsequently be admitted to trading on other regulated markets—

(a) without the consent of the issuer, and

(b) in compliance with the relevant provisions of EU Directive 2003/71/EC.”

Amendment of Regulation 69.

14. Regulation 69 of S.I. No. 60 of 2007 is amended by substituting the following for paragraph (4):

“(4) Notwithstanding paragraph (3) of this Regulation, a market operator, unless the Bank otherwise directs, may defer publication under paragraph (1) of this Regulation in accordance with the criteria set out in Table 4 of Annex II of Commission Regulation (EC) No. 1287/2006.

The Bank may direct on a firm by firm basis or by a generally applicable notice that the deferrals provided for in this paragraph shall not be available.”

Amendment of Regulation 76.

15. Regulation 76 of S.I. No. 60 of 2007 is amended—

(a) in paragraph (2), by substituting the following for subparagraph (a):

“(a) ensure that all information, including but not limited to marketing communications, addressed by an investment firm to clients or potential clients is fair, clear and not misleading,”

(b) in paragraph (2), by substituting the following for subparagraph (c):

“(c) appropriate information is provided in a comprehensible form to clients or potential clients about—

(i) the investment firm and its services,

(ii) financial instruments and proposed investment strategies including but not limited to appropriate guidance on and warnings of the risks associated with investments in those instruments or in respect of particular investment strategies,

(iii) execution venues, and

(iv) costs and associated charges,

so that the clients or potential clients are reasonably able to understand the nature and risk of the investment service and of the specific type of financial instrument that is being offered and, consequently, to take investment decisions on an informed basis. Information to be given for the purposes of this paragraph may be provided in a standardised format.”

Amendment of Regulation 93.

16. The following is substituted for Regulation 93 of S.I. No. 60 of 2007:

“Collective investment undertakings

93. In respect of units in a collective investment undertaking covered by Directive 85/611/EEC, a simplified prospectus complying with Article 28 of that Directive is regarded as appropriate information—

(a) for the purposes of Regulation 76(2)(c)(ii), and

(b) for the purposes of Regulation 76(2)(c)(iv), with respect to the costs and associated charges related to the UCITS itself including the exit and entry commissions.”

Amendment of Regulation 96.

17. Regulation 96(13) of S.I. No. 60 of 2007 is amended by inserting “paragraph (c) of” before “the definition of”.

Amendment of Regulation 105.

18. Regulation 105 of S.I. No. 60 of 2007 is amended by substituting the following for paragraph (8):

“(8) Where one or both of those conditions mentioned in paragraph (7) are not satisfied, an investment firm may outsource, to a service provider located in a third country, the investment service referred to in paragraph (7) only if—

- (a) the firm gives prior notification to the Bank about the outsourcing arrangement, and
- (b) the Bank does not object to that arrangement within a reasonable time following receipt of that notification.”

Amendment of Regulation 106.

19. Regulation 106 of S.I. No. 60 of 2007 is amended—

- (a) in paragraph (3)(b), by deleting “other”,
- (b) in paragraph (4)(b), by substituting “prior express consent” for “prior consent”, and
- (c) by substituting the following for paragraphs (7) to (9):

“(7) An investment firm shall review—

- (a) the execution policy established under this Regulation, and
- (b) the firm’s order execution arrangements,

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

(8) An investment firm shall provide the firm’s retail clients with the following information about the firm’s execution policy in good time prior to the provision of services:

- (a) an account of the relative importance the investment firm assigns, in accordance with the criteria specified in Regulation 97(2), to the factors referred to in Regulation 106(1), or the process by which the firm determines the relative importance of those factors;
- (b) a list of the execution venues on which the firm places significant reliance in meeting its obligation to take all reasonable

steps to obtain on a consistent basis the best possible result for the execution of client orders;

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

and that information shall be provided in a durable medium, or by means of a website (where that does not constitute a durable medium) provided that the conditions specified in Regulation 77(2) are satisfied.”

Amendment of Regulation 108.

20. Regulation 108 of S.I. No. 60 of 2007 is amended by substituting the following for paragraph (4):

“(4) Unless the Bank otherwise directs, an investment firm shall not have to comply with the obligation under this Regulation to make public a limit order, where that order is large in scale compared with normal market size, as determined under Table 2 of Annex II of Commission Regulation (EC) No. 1287/2006.

The Bank may direct on a firm by firm basis or by a generally applicable notice that the exemptions provided for in this paragraph are not available.”

Amendment of Regulation 109.

21. Regulation 109 of S.I. No. 60 of 2007 is amended by substituting the following for paragraphs (2) to (9):

“(2) An investment firm that appoints a tied agent—

- (a) remains fully and unconditionally responsible for any act or omission on the part of the tied agent when acting on behalf of the firm, and
- (b) shall ensure that the tied agent in dealings with any client or potential client discloses at the outset—
 - (i) the capacity in which the tied agent is acting, and
 - (ii) the firm which the tied agent is representing.

(3) An investment firm that appoints a tied agent established in the State shall ensure that the tied agent is—

- (a) of sufficiently good repute, and

(b) possesses the appropriate general, commercial and professional knowledge so as to enable the tied agent to communicate accurately all relevant information about any proposed services to the client or potential client of the investment firm for whom the tied agent acts.

(4) An investment firm shall monitor the activities of the firm's tied agents, established or operating in the State, to ensure the firm's compliance with these Regulations when the tied agents are acting on behalf of the firm.

(5) An investment firm proposing to appoint a tied agent established in the State—

(a) shall report the proposed tied agency arrangements to the Bank at least 6 months before entering into the arrangements, and

(b) must confirm to the Bank that the requirements of paragraph (2) have been satisfied.

(6) If an investment firm appoints a tied agent which provides—

(a) services and activities not covered under these Regulations, and

(b) services and activities to which these Regulations apply,

the firm shall take adequate measures to avoid any negative impact the services and activities described in paragraph (a) could have on the services that are described in paragraph (b) and that are provided by the tied agent on behalf of the firm.

(7) An investment firm shall appoint only tied agents entered in the public register established and maintained under Regulation 110 or, where the investment firms proposes to appoint a tied agent established in another Member State, only tied agents entered in the public register established and maintained in that Member State for the purposes of the Directive.

(8) A tied agent may act on behalf of one investment firm only.

(9) The Bank may impose requirements additional to those contained in these Regulations on tied agents operating in the State.

(10) Tied agents operating in the State may not handle clients' money or client's financial instruments.”

Amendment of Regulation 110.

22. Regulation 110 of S.I. No. 60 of 2007 is amended by substituting the following for paragraph (1)(b):

“(b) all other tied agents appointed by investment firms that have been notified to the Bank by a competent authority of another Member State.”

Amendment of Regulation 111.

23. Regulation 111 of S.I. No. 60 of 2007 is amended—

(a) by substituting the following for paragraphs (3) and (4):

“(3) A client may be considered as an eligible counterparty if it is in a category of clients who are to be considered professional clients in accordance with paragraphs 2(1), 2(2) or 2(3) of Schedule 2, excluding any category which is explicitly mentioned in the definition of “eligible counterparties” in Regulation 3.

(4) Clients in a category of clients who are to be considered professional clients in accordance with paragraph 2(4) of Schedule 2 or paragraph 3 of Schedule 2, on making a request to the investment firm, may also be considered as eligible counterparties, but only in respect of the services or transactions for which the clients could be treated as professional clients.”

(b) by substituting the following for paragraph (7):

“(7) However, where an eligible counterparty expressly requests treatment as a retail client, the provisions in respect of requests of non-professional treatment specified in paragraphs 2(5) and 2(6) of Schedule 2 apply.”

Amendment of Regulation 112.

24. Regulation 112(3)(a) of S.I. No. 60 of 2007 is amended by substituting “operated by a market operator; or” for “operated by a market operator; and”.

Amendment of Regulation 114.

25. Regulation 114(1) of S.I. No. 60 of 2007 is amended—

(a) by substituting the following for paragraph (1):

“(1) A systematic internaliser in shares admitted to trading on a regulated market—

(a) shall publish a firm quote for any of the shares for which—

(i) there is a liquid market, and

(ii) it is a systematic internaliser, and

(b) shall disclose quotes to the systematic internaliser’s clients on request for any of the shares for which there is no liquid market.”

(b) by inserting the following paragraph:

“(6) For the purpose of paragraph (1), shares for which there is a liquid market are those “liquid shares” determined in accordance with Regulation 121A.”

Amendment of Regulation 116.

26. Regulation 116(6) of S.I. No. 60 of 2007 is amended by substituting “paragraphs (4) or (5)” for “paragraphs (3) or (5)”.

Amendment of Regulation 119.

27. Regulation 119 of S.I. No. 60 of 2007 is amended by substituting the following for paragraphs (2) and (3):

“(2) An investment firm, unless the Bank otherwise directs, may defer publication under paragraph (1) in accordance with the criteria set out in Table 4 of Annex II of Commission Regulation (EC) No. 1287/2006.

The Bank may direct on a firm by firm basis or by a generally applicable notice that the deferrals provided for in this paragraph shall not be available.”

Amendment of Regulation 121.

28. Regulation 121 of S.I. No. 60 of 2007 is amended by substituting the following for paragraph (4):

“(4) Notwithstanding paragraph (3), unless the Bank otherwise directs, an investment firm or market operator operating an MTF may defer publication under paragraph (1) in accordance with the criteria set out in Table 4 of Annex II of Commission Regulation (EC) No. 1287/2006.

The Bank may direct on a firm by firm basis or by a generally applicable notice that the deferrals provided for in this paragraph shall not be available.”

Amendment of Regulation 122.

29. The following is substituted for Regulation 122 of S.I. No. 60 of 2007:

“Applicability to provision of ancillary services.

122. The freedoms to provide services and to establish in the State or in other Member States provided by this Part shall only apply to the provision of ancillary services where they are provided together with an investment service, an investment activity or both.”

Amendment of Regulation 124.

30. Regulation 124 of S.I. No. 60 of 2007 is amended by substituting the following for paragraph (4):

“(4) An investment firm may commence to provide the services communicated by it under paragraph, (1) after the Bank has forwarded the information referred to in that paragraph to the relevant competent authority.”

Amendment of Regulation 160.

31. Regulation 160 of S.I. No. 60 of 2007 is amended by inserting the following after paragraph(3):

“(4) If the applicable law of the jurisdiction in which client funds or client financial instruments are held prevents investment firms from complying with subparagraphs (d) and (e) of paragraph (2), the Bank may prescribe the measures that investment firms must take in order to comply with those subparagraphs.”

Amendment of Regulation 174.

32. Regulation 174(2)(b) of S.I. No. 60 of 2007 is amended by substituting “relating to Regulation 177(2)(a)” for “relating to Regulation 177(1)(a)”.

Amendment of Regulation 179.

33. Regulation 179(3) of S.I. No. 60 of 2007 is amended by substituting “inform the Bank without delay” for “inform the Bank”.

Amendment of Schedule 2 of S.I. No. 60 of 2007.

34. Paragraph 3(1) of Schedule 2 of S.I. No. 60 of 2007 is amended by deleting “who may be treated as professionals on request are clients”.

Amendment of Schedule 2 to Central Bank Act 1942.

35. Schedule 2 to the Central Bank Act 1942 (inserted by section 31 of the Central Bank and Financial Services Authority of Ireland Act 2003) is amended by inserting in Part 2 the following item after the item relating to the European Communities (Capital Adequacy of Credit Institutions) Regulations, S.I. No. 661 of 2006:

“

S.I. No. 60 of 2007	European Communities (Markets in Financial Instruments) Regulations 2007	The whole instrument
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GIVEN under my Official Seal,
21 November 2007

BRIAN COWEN.
Minister for Finance.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
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TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2
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(Teil: 01 - 6476834/35/36/37; Fax: 01 - 6476843)
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€4.06

