



STATUTORY INSTRUMENTS.

**S.I. No. 443 of 2014**



EUROPEAN UNION (EUROPEAN MARKETS INFRASTRUCTURE)  
REGULATIONS 2014

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S.I. No. 443 of 2014

EUROPEAN UNION (EUROPEAN MARKETS INFRASTRUCTURE)  
REGULATIONS 2014

I, MICHAEL NOONAN, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) for the purpose of giving full effect to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012<sup>1</sup>, hereby make the following regulations:

Part 1

PRELIMINARY AND GENERAL

*Citation and commencement*

1. (1) These Regulations may be cited as the European Union (European Markets Infrastructure) Regulations 2014.

(2) Regulation 14 comes into operation on 1 December 2014.

*Interpretation*

2. (1) In these Regulations—

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

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

“assessment” means an assessment referred to in Regulation 23;

“assessor” means an assessor appointed by the Bank under Regulation 23;

“authorised officer” means a person appointed as an authorised officer by the Bank under Regulation 6;

“Bank” means Central Bank of Ireland;

“central counterparty” has the meaning assigned to “CCP” in point (1) of Article 2 of Regulation 648/2012;

“clearing” has the meaning assigned to it in point (3) of Article 2 of Regulation 648/2012;

“clearing member” has the meaning assigned to it in point (14) of Article 2 of Regulation 648/2012;

<sup>1</sup>OJ No. L 201, 27.07.2012, p. 1

*Notice of the making of this Statutory Instrument was published in  
“Iris Oifigiúil” of 10th October, 2014.*

“contravene” includes a failure to comply, and also includes—

- (a) attempting to contravene,
- (b) aiding, abetting, counselling or procuring a person to commit a contravention,
- (c) inducing, or attempting to induce, a person (whether by threats or promises or otherwise) to commit a contravention,
- (d) being (directly or indirectly) knowingly concerned in, or a party to, a contravention, and
- (e) conspiring with others to commit a contravention;

“counterparty” means any undertaking or person that—

- (a) enters into a derivative contract, or
- (b) is otherwise subject to Regulation 648/2012;

“court” means High Court;

“data equipment” means equipment for processing data;

“derivative” or “derivative contract” have the meaning assigned to them in point (5) of Article 2 of Regulation 648/2012;

“EMIR regulatory return” means the return required by the Bank under Regulation 14(1);

“financial counterparty” has the meaning assigned to it in point (8) of Article 2 of Regulation 648/2012;

“non-financial counterparty” has the meaning assigned to it in point (9) of Article 2 of Regulation 648/2012;

“OTC derivative” or “OTC derivative contract” have the meaning assigned to them in point (7) of Article 2 of Regulation 648/2012;

“pension scheme arrangement” has the meaning assigned to it in point (10) of Article 2 of Regulation 648/2012;

“Pensions Authority” means the body established by Part II of the Pensions Act 1990 (No. 25 of 1990);

“prescribed contravention” means a contravention of—

- (a) a provision of Title II of Regulation 648/2012,
- (b) a provision of—

- (i) Commission Delegated Regulation (EU) No 148/2013 of 19 December 2012<sup>2</sup>,
  - (ii) Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012<sup>3</sup>,
  - (iii) Commission Implementing Regulation (EU) No 1247/2012 of 19 December 2012<sup>4</sup>, or
  - (iv) Commission Delegated Regulation (EU) No 285/2014 of 13 February 2014<sup>5</sup>,
- (c) a provision of these Regulations,
- (c) any rule or standard made under a provision of these Regulations, or
- (d) a direction issued under these Regulations;

“processing” has the same meaning as it has in the Data Protection Acts 1988 and 2003;

“record” means any book, document or any other written or printed material in any form including any information stored, maintained or preserved by means of any mechanical or electronic device, whether or not stored, maintained or preserved in a legible form;

“Regulation 648/2012” means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories;

“relevant records” means records relating to the subject matter of Regulation 648/2012 and these Regulations;

“sanction” means any sanction referred to in Regulation 32;

“specified sanction” in relation to an adverse assessment, means a sanction or sanctions referred to in Regulation 23(8) that may be imposed on the assessee;

“trade repository” has the meaning assigned to it in point (2) of Article 2 of Regulation 648/2012;

“third party assessor” means a person approved for appointment by the Bank under Regulation 12(1);

“trading venue” has the meaning assigned to it in point (4) of Article 2 of Regulation 648/2012.

<sup>2</sup>OJ No. L 52, 23.02.2013, p. 1

<sup>3</sup>OJ No. L 52, 23.02.2013, p. 11

<sup>4</sup>OJ No. L 352, 21.12.2012, p. 20

<sup>5</sup>OJ No. L 85, 21.03.2014, p. 1

(2) A word or expression which is used in these Regulations and is also used in Regulation 648/2012 has, unless the context otherwise requires, the same meaning in these Regulations as it has in Regulation 648/2012.

*Application of Regulations*

3. These Regulations apply to the following:

- (a) central counterparties;
- (b) clearing members of the parties referred to in subparagraph (a);
- (c) counterparties to a derivative contract;
- (d) trading venues.

Part 2

COMPETENT AUTHORITY FOR REGULATION 648/2012 AND THESE REGULATIONS

*Designation of Bank as competent authority*

4. (1) The Bank is designated as the competent authority in the State—

- (a) responsible for carrying out the functions and duties of a competent authority referred to in Regulation 648/2012, and
- (b) in respect of its functions and duties under these Regulations.

(2) In the case of pension scheme arrangements that are monitored and supervised by the Pensions Authority, in accordance with the provisions of the Pensions Acts 1990 to 2013, the Pensions Authority shall, where requested in writing by the Bank, provide the Bank with such assistance and information as is necessary to enable the Bank to perform its functions under Regulation 648/2012 and these Regulations.

Part 3

POWERS OF BANK

*Powers of Bank*

5. (1) The Bank shall have all the powers necessary for the performance of its functions and duties under Regulation 648/2012 and these Regulations.

(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 their obligations pursuant to Regulation 648/2012 and these Regulations.

(3) Without limitation to the generality of paragraph (1), the Bank shall, in particular, have the powers set out in this Part and in Parts 4, 5 and 6.



*Authorised officers*

6. (1) The Bank may, in writing, appoint persons as authorised officers for the purposes of monitoring compliance with Regulation 648/2012 and these Regulations.

(2) The Bank may, at any time in writing, revoke the appointment of an authorised officer appointed under this Regulation.

(3) Subject to paragraph (2), the appointment of an authorised officer under this Regulation may be for a specified, or an unspecified, period or for a specified purpose.

(4) The Bank shall provide every authorised officer with a certificate of appointment as such.

(5) When exercising a power conferred on an authorised officer under this Part, an authorised officer shall produce his or her certificate of appointment, together with some form of personal identification, if requested to do so by a person affected by the exercise of the power.

(6) The appointment of an authorised officer made under this Regulation ceases—

- (a) where the Bank revokes the appointment, at the time of revocation,
- (b) where the person appointed dies, at the time of death,
- (c) where the person resigns, at the time of resignation,
- (d) where the appointment is for a specified period, at the end of that period,
- (e) where the appointment is for a specified purpose, on the completion of that purpose, or
- (f) where the person appointed is, when appointed, an officer of the Bank, when the person ceases to be such an officer.

*Powers of authorised officers*

7. (1) An authorised officer may do one or more of the following for the purpose of monitoring compliance with Regulation 648/2012 or these Regulations (including carrying out investigations in relation thereto):

- (a) subject to Regulation 8(1), at all reasonable times enter any place at which the authorised officer reasonably believes there are relevant records;
- (b) subject to Regulation 8(1), enter any place without prior notice, at which the authorised officer reasonably believes that a person to whom Regulation 648/2012 or these Regulations apply, is carrying on, or has carried on, business activities which are relevant to Regulation

648/2012, in order to ensure that obligations in relation to clearing and risk mitigation techniques (described in Articles 4, 10 and 11 of Regulation 648/2012) are being complied with;

- (c) search and inspect a place and any relevant records at that place;
- (d) secure for later inspection any place, or any part of any place, for such a period as may reasonably be necessary for the purposes of the exercise of his or her powers under this Part;
- (e) require a person at a place or any person employed in connection with a business carried out at such place, to produce to the authorised officer relevant records, and where any of those relevant records are in a non-legible form to—
  - (i) reproduce them in a legible form, or
  - (ii) to give the authorised officer such information as that officer reasonably requires regarding entries in them;
- (f) 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);
- (g) secure for later inspection any relevant records so provided or found and any data equipment, including any computer, on which the authorised officer reasonably believes relevant records may be held;
- (h) remove and retain some or all of the relevant records inspected or produced under this Regulation for such period as may be reasonable to facilitate their further examination;
- (i) require a person at a place to give to the authorised officer information (including information by way of a written report) that that officer reasonably requires in relation to activities covered by Regulation 648/2012 and these Regulations and to produce all relevant records that the person has in their possession or to which they have access;
- (j) require a person at a place by whom, or on whose behalf, data equipment is or has been used, or a person who has charge of, or is otherwise concerned with the operation of, that equipment or any associated apparatus or material, to give the authorised officer access and all reasonable assistance in relation to its operation;
- (k) require a person at a place to explain entries in relevant records to the authorised officer;
- (l) require a person to whom this Part applies to answer questions.

- (2) Where a person from whom production of a relevant record is required claims a lien over it, its production does not affect the lien.
- (3) An obligation to produce a relevant record or report, or to provide information or assistance, under this Regulation applies to—
- (a) an examiner, 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 the authorised officer concerned 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.
- (4) When exercising a power under this Part, an authorised officer may, where the officer considers it necessary, be accompanied by one or more—
- (a) members of the Garda Síochána,
  - (b) authorised officers.
- (5) In this Regulation “place” means a place entered by an authorised officer pursuant to paragraph (1)(a) or (b) and includes the following:
- (a) a dwelling or a part thereof;
  - (b) a building or part thereof;
  - (c) a vehicle, whether mechanically propelled or not;
  - (d) a vessel, whether sea-going or not.
- Search warrant*
8. (1) An authorised officer shall not, except with the consent of the occupier, enter a private dwelling (other than a part of a private dwelling used as a place of work) unless the officer has obtained a warrant from a judge of the District Court.
- (2) Where an authorised officer in the exercise of the authorised officer’s powers under Regulation 7 is prevented from entering any place, whether or not a private dwelling, where he or she believes that there are relevant records, the authorised officer may apply to a judge of the District Court for a warrant under this Regulation authorising the entry by the authorised officer into the place.
- (3) Without prejudice to the powers conferred on an authorised officer by or under any provision of these Regulations, an authorised officer may, for the purposes of an investigation into an offence under these Regulations apply to a judge of the District Court for a warrant in relation to any place.

(4) Where, on the hearing of an application under paragraphs (2) or (3), a judge of the District Court is satisfied on sworn information of the authorised officer that he or she—

- (a) has been prevented from entering any place that is not a private dwelling,
- (b) has reasonable grounds for believing that relevant records are kept at a place that comprise, or form part of, a private dwelling, or
- (c) has reasonable grounds for suspecting that evidence of, or relating to, the commission of an offence under these Regulations is to be found in any place,

that judge may issue a warrant under the judge's hand authorising one or more authorised officers 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 place or private dwelling and exercise any of the powers referred to in Regulation 7.

*Power of Bank to issue directions to financial or non-financial counterparty*

9. (1) Where the Bank considers it necessary to do so for the purposes of its functions and duties under Regulation 648/2012 or these Regulations, it may issue a direction in writing to—

- (a) a person who is a financial counterparty, to take, or refrain from taking or to prohibit, including a prohibition on entering into derivative contracts, such actions as are specified in the direction for the purpose of—
  - (i) ensuring the stability and integrity of the financial system in—
    - (I) the State, or
    - (II) where relevant, another Member State,
  - (ii) ensuring compliance by the financial counterparty concerned with Regulation 648/2012, or
  - (iii) preventing any person from contravening or continuing to contravene a provision of Regulation 648/2012 or these Regulations,

or
- (b) a person who is a non-financial counterparty, to take, or refrain from taking or to prohibit, including a prohibition on entering into derivative contracts, such actions as are specified in the direction for the purpose of ensuring the stability and integrity of the financial system in—

- (i) the State, or
- (ii) where relevant, another Member State,

(2) Where the Bank is satisfied that erroneous or incomplete data returns have been made to a trade repository by a person who is a financial counterparty, it shall have the power to direct the person that submitted such data, to rectify any errors or omissions to the satisfaction of the Bank and to subsequently resubmit the data to the trade repository without delay.

(3) A direction under paragraph (1), (2) or (4) shall—

(a) subject to subparagraph (b), take effect on and after such date or the occurrence of such event, as is specified in the direction for the purpose,

(b) cease to have effect—

(i) on such date, or the occurrence of such event, as is specified in the direction for the purpose, or

(ii) on the expiration of the period of 12 months, if not otherwise specified, immediately following the day on which the direction takes effect,

and

(c) be complied with by any person to whom a direction is given under paragraph (1), (2) or (4) within such reasonable period as may be specified in the direction.

(4) Where the Bank considers it necessary to do so for the purposes of paragraph (1), the Bank may on the expiry of the period specified in a direction for which it is to have effect, issue another direction to the person concerned to take, or refrain from taking, such actions as are specified in the direction.

(5) A person may apply to the court for, and the court may, if it considers it appropriate to do so, grant an order affirming, setting aside or varying a direction or order made under paragraph (1), (2) or (4).

(6) An application under paragraph (5) shall be made not later than 14 days after the date of receipt, by the applicant, of the notification of the direction or within such extended period as the court allows.

(7) Where a direction under this Regulation is not or has not been complied with or is, in the opinion of the Bank, unlikely to be complied with, the Bank may apply to the court in a summary manner for an order enforcing the direction.

(8) At the hearing of an application made under paragraph (5) or (7), the court may make such order as it considers appropriate in the circumstances (including an order dismissing the application).

(9) The court may direct the hearing together of applications made under paragraphs (5) and (7) that relate to the same direction.

(10) Where the court is satisfied that it is desirable, because of the nature or the circumstances of the case, or having regard to the interests of justice, then the whole or any part of proceedings relating to an application under paragraphs (5) or (7) before it may be heard otherwise than in public.

*Power of Bank to issue contravention notice to non-financial counterparty*

10. (1) Where the Bank considers it necessary for the purposes of its functions and duties under Regulation 648/2012 or these Regulations, it may issue a notice in writing (in this Regulation referred to as a “contravention notice”) to a person who is a non-financial counterparty, to, not later than the date specified in the notice, take, or refrain from taking such actions (including entering into derivative contracts) as are specified in the notice for the purpose of—

- (a) ensuring compliance by the non-financial counterparty concerned with Regulation 648/2012 or these Regulations, or
- (b) preventing any person from contravening or continuing to contravene a provision of Regulation 648/2012 or these Regulations.

(2) A contravention notice shall—

- (a) state that the Bank is of the opinion referred to in paragraph (1),
- (b) state the reason for that opinion,
- (c) identify the provisions of Regulation 648/2012 or these Regulations in respect of which the Bank has formed the opinion,
- (d) direct the person to remedy the contravention or the matters occasioning the notice by a date specified in the notice that shall not be earlier than the end of the period within which an appeal may be made under paragraph (6),
- (e) include information regarding the making of an appeal under paragraph (6),
- (f) include such matters (if any) as the Bank considers appropriate, and
- (g) be signed and dated by a person duly authorised by the Bank to do so.

(3) A person on whom a contravention notice has been issued, under this Regulation, who is of the opinion that the contravention notice has been complied with shall confirm in writing to the Bank that the matters referred to in the notice have been so remedied.

(4) Where a person on whom a contravention notice has been issued, under this Regulation, confirms in writing to the Bank in accordance with paragraph (3) that the matters referred to in the contravention notice have been remedied, the Bank shall, on being satisfied that the matters have been so remedied, not later than 10 days from receipt of such confirmation, give notice to the person concerned of compliance with the contravention notice.

(5) Where the Bank is satisfied that erroneous or incomplete data returns have been made to a trade repository by a person who is a non-financial counterparty, it shall, by way of a contravention notice issued in accordance with this Regulation, have the power to direct the person that submitted such data, to rectify any errors or omissions to the satisfaction of the Bank and to subsequently resubmit the data to the trade repository without delay.

(6) A person who is a non-financial counterparty aggrieved by a contravention notice may, within 14 days beginning on the day on which the notice is issued to him or her, appeal against the notice to the court and, in determining the appeal the judge may, if he or she is satisfied that it is reasonable to do so, confirm, vary or cancel the notice.

(7) A person who is a non-financial counterparty who appeals under paragraph (6) shall at the same time notify the Bank of the appeal and the grounds for the appeal, and the Bank shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal.

(8) Where an appeal under paragraph (6) is made, and the contravention notice is not cancelled, the notice as confirmed or varied shall take effect on the later of—

- (a) the day next following the day on which the notice is confirmed or varied on appeal or the appeal is withdrawn, or
- (b) the day specified in the notice.

(9) Where there is no appeal under paragraph (6), the contravention notice shall take effect on the later of—

- (a) the end of the period for making an appeal, or
- (b) the day specified in the notice.

(10) The Bank may withdraw a contravention notice at any time.

(11) Where the person who is a non-financial counterparty—

- (a) fails to take, or fails to refrain from, such actions as are specified in the contravention notice, or
- (b) fails to rectify any errors or omissions in the data concerned or has not resubmitted the rectified data to the trade repository in accordance with paragraph (5),

the Bank may apply, by motion, to the court for a compliance order.

(12) The court may hear an application under paragraph (11) only if it is satisfied that a copy of the application has been served on the non-financial counterparty concerned.

(13) The court may make such interim or interlocutory order as it considers appropriate pending determination of an application made under paragraph (11) and the court may not refuse interim or interlocutory relief solely on the basis that the Bank may not suffer damage if relief were not granted pending determination of the application.

(14) On the hearing of an application made under paragraph (11), the court may make an order requiring the non-financial counterparty to comply with the contravention notice or may refuse the application.

(15) Where the court makes an order under paragraph (14), it may make such ancillary orders as it considers appropriate.

(16) Where the court is satisfied that it is desirable, because of the nature or the circumstances of the case, or having regard to the interests of justice, then the whole or any part of proceedings relating to an application under paragraphs (6) or (11) before it may be heard otherwise than in public.

#### *Privilege*

11. (1) Where a person refuses to produce information or give access to it, pursuant to a requirement under these Regulations, on the grounds that the information contains privileged legal material, the Bank may, at any time not later than 6 months (or such longer period as the court may allow) of the date of such refusal, apply to the court for a determination as to whether the information, or any part of the information, is privileged legal material where in relation to the information concerned—

- (a) the Bank has reasonable grounds for believing that it is not privileged legal material, or
- (b) due to the manner or extent to which such information is presented together with any other information, it is impossible or impractical to extract only such information.

(2) A person who refuses to produce information or give access to it, pursuant to a requirement under these Regulations, on the grounds that the information contains privileged legal material shall preserve the information and keep it in a safe and secure place and manner pending the determination of an application under paragraph (1) and shall, if the information is so determined not to be privileged legal material, produce it in accordance with such order as the court considers appropriate.

(3) A person shall be considered to preserve information, where the person has complied with such requirements as may be imposed by an authorised officer under paragraph (d) or (g) of Regulation 7(1).



(4) Where an application is made by the Bank under paragraph (1), the court may give such interim or interlocutory directions as the court considers appropriate including, without limiting the generality of the foregoing, directions as to the appointment of a person with suitable legal qualifications possessing the level of experience, and the independence from any interest falling to be determined between the parties concerned, that the court considers to be appropriate for the purpose of—

- (a) examining the information, and
- (b) preparing a report for the court with a view to assisting or facilitating the court in the making by the court of its determination as to whether the information is privileged legal material.

(5) An application under paragraph (1)—

- (a) shall be by motion, and
- (b) may, where the court is satisfied that it is desirable, because of the nature or the circumstances of the case, or having regard to the interests of justice, then the whole or any part of proceedings relating to an application under this Regulation before it may be heard otherwise than in public.

(6) In this Regulation, “privileged legal material” means information which, in the opinion of the court, a person is entitled to refuse to produce on the grounds of legal professional privilege.

*Third party assessors*

12. (1) Subject to paragraph (2), the Bank may approve the appointment of a person (in this Part referred to as a “third party assessor”) under Regulation 14(1) where it is satisfied that the person has the requisite expertise to—

- (a) objectively assess whether an EMIR regulatory return has been prepared and completed in compliance with these Regulations, including any rules or standards issued by the Bank under Regulation 13, and
- (b) perform the functions reasonably required of a third party assessor in respect of an EMIR regulatory return under Regulation 14.

(2) Before approving the appointment of a third party assessor, the Bank shall duly consider whether the third party assessor appears to have—

- (a) sufficient detachment from the counterparty to fulfil the requirement under paragraph (1)(a), having regard to any existing professional or commercial relationship, and
- (b) any potential conflict of interest in assessing the EMIR regulatory return, including any arising from the fact that the assessment may raise questions relating to the quality or reliability of work previously carried out by the proposed assessor.

(3) The counterparty concerned shall provide the Bank with the necessary information that the Bank may reasonably require in respect of a person proposed for appointment as a third party assessor.

(4) Notwithstanding the generality of paragraph (1), where a person appoints an accountant or auditor to conduct a statutory audit or to conduct an audit which, but for the absence of a requirement to produce a statutory audit, would be a statutory audit, the obligation to secure the pre-approval of the Bank under paragraph (1) shall not apply.

(5) The Bank may at any time require any counterparty to which paragraph (1) or (7) of Regulation 14 applies to submit to a re-assessment of the expertise of its third party assessor.

(6) The Bank shall, not later than 60 days from the date on which an assessment under paragraph (1) or a re-assessment under paragraph (5) was initiated, overrule the person appointed as assessor under Regulation 14(1) other than where it has been satisfied, having considered the matters referred to in paragraphs (1) and (2), that the person concerned is an appropriate person to be appointed.

*Rules and standards in relation to EMIR regulatory return*

13. (1) The Bank may issue rules or standards in relation to an EMIR regulatory return, from time to time, and the Bank shall cause—

- (a) such rules or standards to be published, as soon as practicable, on the website of the Bank, and
- (b) notice of the issue of such rules or standards to be published in the *Iris Oifigiúil*, as soon as may be.

(2) Any rules or standards issued by the Bank under this Regulation shall have regard to the need to ensure that the requirements imposed by the rules or standards concerned are effective and proportionate having regard to the nature, scale and complexity of the activities of the persons to whom the rules or standards are addressed.

(3) The Bank may take whatever additional measures it considers appropriate to ensure that counterparties subject to the obligation to make an EMIR regulatory return are made aware of rules or standards, including imposing the requirement on financial counterparties to inform their clients of the obligations under these Regulations in such manner as the Bank may specify.

(4) In this Regulation “rules or standards” means rules or standards issued by the Bank pursuant to paragraph (1).

*EMIR regulatory return*

14. (1) The Bank may for the proper and effective supervision of persons that are subject to Regulation 648/2012 and these Regulations, and having had regard to the matters set out in paragraph (2)—

(a) by notice which does not identify any counterparty—

(i) generally on its website, and

(ii) in the *Irish Oifigúil*,

or

(b) by notice in writing issued to counterparties concerned,

require counterparties to—

(i) not later than the expiry of the period specified in the notice for such appointment, appoint a third party assessor,

(ii) not later than the expiry of the period specified in the notice for such requirement, require a third party assessor appointed to the counterparty concerned to objectively assess whether the EMIR regulatory return has been prepared and completed in compliance with these Regulations, including any rules or standards issued by the Bank under Regulation 13, and

(iii) not later than the expiry of the period specified in the notice for such submission, submit to the Bank a return (in these Regulations, referred to as an “EMIR regulatory return”) confirming whether or not, in respect of the period specified, that counterparty has complied with these Regulations, including any rules or standards issued by the Bank under these Regulations.

(2) The matters referred to in paragraph (1) are the following:

(a) whether any other powers that may be available to the Bank under Regulation 648/2012 or these Regulations would be more appropriate in the circumstances;

(b) the cost implications of an EMIR regulatory return to the counterparties concerned.

(3) The Bank shall not require an EMIR regulatory return from any person more than once in any 12 month period.

(4) The EMIR regulatory return shall be signed by—

(a) 2 directors, or the principals or principal, of the counterparty concerned in compliance with these Regulations and any rules or standards the Bank may issue under these Regulations, and

(b) the third party assessor concerned.

(5) Non-financial counterparties shall be exempt from the requirements to submit an EMIR regulatory return where they satisfy the following conditions:

- (a) the counterparty has had less than 100 outstanding OTC derivative contracts at any time during the reporting period to which the EMIR regulatory return relates;
  - (b) the counterparty has outstanding OTC derivative contracts which cumulatively have a gross notional value of less than €100 million at the time the request was made;
  - (c) the counterparty has delegated the reporting of the details of their OTC derivative contracts to a third party or parties in accordance with Article 9(1) of Regulation 648/2012 during the entire period to which the EMIR return relates.
- (6) An EMIR regulatory return required by the Bank under this Regulation shall be completed in compliance with any rules or standards which may be issued by the Bank pursuant to Regulation 13.
- (7) Where a third party assessor fails to comply with rules or standards issued by the Bank, the Bank may, by notice issued in writing—
- (a) to the assessor concerned, direct that the person is no longer approved for appointment by the Bank pursuant to Regulation 12(1) or (4), and
  - (b) to the person on whose behalf the assessor concerned is appointed, confirmation of the matters referred to in subparagraph (a).
- (8) It shall be a defence to a contravention of these Regulations where the Bank is satisfied that the third party assessor or the persons mentioned in paragraph (4)—
- (a) believed, on reasonable grounds, that he or she had complied, and
  - (b) took all reasonable steps and exercised due diligence to ensure compliance,
- with all relevant rules or standards issued pursuant to Regulation 13(1).
- (9) A third party assessor who gives information to the Bank in his or her capacity as a third party assessor pursuant to a requirement under these Regulations or to an authorised officer in the exercise of his or her powers shall not be taken to have contravened any duty of confidentiality owed to any person as a result of so giving.

#### Part 4

##### PROVISION OF REPORT TO BANK

###### *Reviewees*

15. (1) The following are reviewees for the purposes of this Part:
- (a) a financial counterparty;

(b) a non-financial counterparty—

- (i) referred to in Article 10(1) of Regulation 648/2012, or
- (ii) that would exceed at least one of the clearing thresholds referred to in that Article 10, were it not for the exclusions from the calculation of positions determined in accordance with paragraph (4) of that Article.

(2) A reviewee shall take such steps as are reasonably necessary to ensure that a reviewer performs his or her functions under this Part in accordance with the terms of his or her contract.

#### *Reviewers*

16. (1) A reviewer shall be a person appearing to the Bank to have the skills relating to the business of the reviewee necessary to prepare an objective report on the matters concerned and, without limiting the generality of the foregoing, may be an auditor, actuary, accountant, lawyer or any other person with relevant business, technical or technological skills employed or otherwise engaged by the reviewee.

(2) A reviewer may be—

- (a) nominated by the reviewee, within such period as is specified in a notice given under Regulation 17(1), and approved by the Bank, or
- (b) nominated by the Bank, where no person is nominated by the reviewee within the period specified in a notice given under Regulation 17(1) or the Bank is not satisfied with the person so nominated.

(3) When considering whether to approve a nomination under paragraph (2)(a) or make a nomination under paragraph (2)(b), the Bank shall have regard to the circumstances giving rise to the requirement for a report and whether the person it proposes to so approve or nominate appears to have—

- (a) the competence and capabilities necessary to prepare the report on the matter concerned,
- (b) the ability to complete the report within the timetable for its completion specified by the Bank in the notice given under Regulation 17(1),
- (c) any relevant specialised knowledge, including specialised knowledge of the reviewee, the nature of the business carried on by the reviewee and the matters to be reported on,
- (d) any potential conflict of interest in reviewing the matters to be reported on, including any arising from the fact that the matters may raise questions relating to the quality or reliability of work previously carried out by the proposed reviewer,

- (e) sufficient detachment, having regard to any existing professional or commercial relationship, to give an objective opinion, and
  - (f) previous experience in preparing reports under this Part or reports of a similar nature.
- (4) Where the Bank approves a nomination under paragraph (2)(a) or makes a nomination under paragraph (2)(b) it shall notify the reviewee, in writing, accordingly.
- (5) Where a reviewer is approved or nominated by the Bank under paragraph (4), the reviewee shall enter into a contract with the reviewer.
- (6) It shall be a term of the contract referred to in paragraph (5)—
  - (a) that the reviewer is required to prepare for the reviewee a report in accordance with the notice given under Regulation 17(1),
  - (b) that any duty owed by the reviewer to the reviewee which might limit the provision of information or opinion by the reviewee to the reviewer in preparing a report under this Part shall be waived,
  - (c) that the reviewer is required and permitted to provide to the Bank where the Bank so requests—
    - (i) periodic updates on progress and issues arising,
    - (ii) interim reports,
    - (iii) documents and working papers,
    - (iv) copies of any draft reports given to the reviewee, and
    - (v) specific information about the planning and progress of the work to be undertaken (which may include project plans, progress reports including the amount of work completed, details of time spent, costs to date and details of any significant findings and conclusions),
  - (d) that the contract is governed by the law of the State,
  - (e) that—
    - (i) the Bank has the right to enforce the provisions included in the contract,
    - (ii) in proceedings brought by the Bank for the enforcement of the provisions referred to in subparagraph (i) the reviewer is not to have available by way of defence, set-off or counterclaim any matter that is not relevant to those provisions,

(iii) where the contract includes an arbitration agreement, the Bank is not, in exercising the right specified in subparagraph (i), to be treated as a party to, or bound by, the arbitration agreement, and

(iv) the provisions included in the contract are irrevocable and may not be varied or rescinded without the Bank's prior consent in writing,

and

(f) that the terms, mentioned in subparagraphs (a) to (e), of the contract may not be varied or rescinded in such a way as to extinguish or alter the provisions included in the contract.

(7) Where the Bank considers it appropriate, it may request the reviewee to give to the Bank a draft of the contract with the reviewer before it is made and the Bank may require such modifications to the draft contract as it considers appropriate.

*Report — notice*

17. (1) The Bank may for the purposes of the proper and effective implementation of Regulation 648/2012 and these Regulations, by notice in writing given to a reviewee, require the reviewee to provide to the Bank, in accordance with such notice, a report, or documents, on any matter specified in the notice about which the Bank has required or could require the provision of information.

(2) A notice under paragraph (1) shall be in writing and shall state—

(a) the date on which the notice was given,

(b) the period within which the reviewee shall nominate a person to the Bank for approval under Regulation 16,

(c) the purpose of the report,

(d) the scope of the report,

(e) the timetable for completion of the report,

(f) the matters required to be reported on,

(g) whether the report is to include recommendations,

(h) the form of the report,

(i) where appropriate, the methodology to be used in the preparation of the report, and

(j) such other matters relating to the report as the Bank considers appropriate.

(3) Before giving a notice under paragraph (1), the Bank, taking account of the purposes for which the report is required, shall have regard to at least the following matters:

- (a) whether any other powers that may be available to the Bank under any provision of financial services legislation may be more appropriate in the circumstances concerned;
- (b) the relevant knowledge and expertise available to the reviewee;
- (c) the cost implications for the reviewee of providing the report, the resources available to the reviewee and the benefit to the reviewee of providing the report.

(4) In this Regulation, “financial services legislation” has the meaning assigned to it in section 3(1) of the Central Bank (Supervision and Enforcement) Act 2013 (No. 26 of 2013).

*Report — general*

18. (1) A reviewer shall, where requested by the Bank, in such form and within such period as the Bank may specify, provide an explanation of all or any part of a report under this Part or the recommendations, if any, made in the report, or of such other matters relating to the report as the Bank considers appropriate.

(2) The costs of and incidental to the preparation of a report prepared pursuant to this Part shall be borne by the reviewee.

(3) A reviewee shall give all such assistance to a reviewer as he or she may reasonably require for the purposes of the preparation of a report prepared pursuant to this Regulation.

(4) A person who is providing or who at any time has provided services to a reviewee in relation to any matter on which a report is required to be given pursuant to this Regulation shall give all such assistance to a reviewer as he or she may reasonably require for the purposes of the preparation of the report.

(5) The Bank shall not be bound by the content of a report prepared pursuant to this Regulation and such a report shall not be taken to be a decision or opinion of the Bank for any purpose.

(6) The adoption by a reviewee or any other person of a course of action recommended or described in a report prepared pursuant to this Regulation does not represent an endorsement or approval of that course of action by the Bank.

(7) The Bank shall not be liable for any acts or omissions of a reviewer or reviewee relating to a report prepared pursuant to this Regulation.



*Guidelines*

19. (1) The Bank may publish, in such form and manner as it considers appropriate, guidelines for the purpose of providing practical guidance for reviewees and reviewers relating to the application and operation of this Part.

(2) The guidelines published by the Bank under paragraph (1) may include different provisions in respect of different classes of reviewee or reviewer.

*Powers of Bank under Part 4*

20. (1) Subject to paragraph (2), where the Bank is of the opinion that a person has failed or is failing to comply with any condition or requirement imposed by this Part or by the terms of a contract, the Bank may apply to the court for an order enforcing the obligations of that person under this Part or under the terms of such a contract.

(2) Where the Bank is of the opinion that a counterparty has failed or is failing to comply with a condition or requirement imposed by this Part the Bank may give—

- (a) a direction under Regulation 9, or
- (b) a contravention notice under Regulation 10.

*Offences under Part 4*

21. (1) A person who—

- (a) obstructs or impedes a reviewer in the preparation of a report under this Part, or
- (b) in relation to the preparation of a report under this Part, gives information to a reviewer that the person knows to be false or misleading in a material particular,

commits an offence.

(2) A person who is a reviewer that, in relation to the preparation of a report under this Part, gives information to the Bank which the reviewer knows to be false or misleading in a material particular commits an offence.

(3) A person who commits an offence under paragraph (1) or (2) is liable—

- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, or
- (b) on conviction on indictment, to a fine not exceeding €250,000 or imprisonment for a term not exceeding 3 years, or both.

*Definitions for Part 4*

22. In this Part—

“contract” means a contract between a reviewer and a reviewee entered into under Regulation 16(5);

“report” means a report required by the Bank under Regulation 17(1);

“reviewer” means a person nominated under Regulation 16(2)(a) who has been approved by the Bank or a person nominated by the Bank under Regulation 16(2)(b).

## Part 5

### ENFORCEMENT

#### *Appointment of assessor*

23. (1) Where the Bank has reason to suspect, based on reasonable grounds, that a prescribed contravention is being committed or has been committed by a person (in this Part referred to as the “assessee”), the Bank may appoint an assessor (or, if the Bank thinks fit to do so, more than one assessor) to conduct an assessment as to—

- (a) whether or not the assessee is committing or has committed the contravention, and
- (b) where the assessor finds that the assessee is committing or has committed the contravention, the specified, sanction or, sanctions, if any, which the assessor considers is or 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 his or her 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 the following:

- (a) a statement that the assessor is appointed by the Bank under this Regulation;
- (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;

(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 referred to in paragraph (5)(c) 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.

(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 is or 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 29, 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*

24. (1) Where the Bank is satisfied that an assessor has contravened paragraph (2) or is incapacitated, the Bank may revoke the appointment of the assessor at any time.

(2) An assessor (including a person proposed for appointment as an assessor) shall—

(a) disclose to the Bank any material interest that the assessor may have in any matter that may arise during the assessment,

(b) disclose to the Bank any actual or potential conflict of interest that the assessor may have in conducting an assessment,

- (c) not use any information 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 procedures and requirements set out in this Part, and
- (f) not issue an assessment that is contrary to law.

*Power to require witnesses to appear and give evidence*

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

- (a) appear before the assessor to give evidence (including giving 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 (in this paragraph referred to as "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 disclosed, 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*

26. (1) The Bank or the assessor may (including at the request of the assessee) refer a question of law arising in an 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 the assessor 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.*

27. (1) Where the assessment of an 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 statement referred to in Regulation 23(8)), and
- (b) advise the assessee that—
  - (i) the assessee may appeal against the adverse assessment to the court under Regulation 28, and
  - (ii) the Bank may apply to the court under Regulation 31 for an order confirming the adverse assessment (including the specified sanctions).

(2) Where the assessment of an 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.

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

28. (1) The assessee may appeal against an adverse assessment (including the specified sanctions) not later than 28 days after the Bank has complied with Regulation 27(1) in relation to the assessee, or within such further period as the court allows.

(2) Where the court is satisfied, because of the nature or the circumstances of the case or otherwise in the interests of justice, that it is desirable that the whole or any part of proceedings relating to an appeal under paragraph (1) should not be heard in public then, where the court so directs, the proceedings 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) subject to paragraph (6), 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) 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 Regulation 32(a) to (e).

*Power to correct assessments*

29. (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 23(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*

30. (1) Where—

- (a) no appeal under Regulation 28 against the adverse assessment (including the specified sanctions) is lodged with the court within the period for lodging an appeal, or
- (b) an appeal under Regulation 28 against the adverse assessment (including the specified sanctions) which has been lodged with the court within the period for lodging the appeal is withdrawn or abandoned,

then the specified sanctions, pursuant to Regulation 32(a) to (e) shall take effect—

- (i) in case of subparagraph (a), on the day after the date of expiry of the period allowed for an appeal under Regulation 28, or
- (ii) in case of subparagraph (b), on the day after the date of the withdrawal or abandonment, as the case may be.

(2) Where an appeal under Regulation 28 against the adverse assessment is lodged with the court within the period allowed for lodging the appeal, then the specified sanctions pursuant to Regulation 32(a) to (e), as confirmed or varied in the order, if any, shall take effect on the date of that order or such other date as the court may specify in the order.

*Enforcement of adverse assessment (including specified sanctions)*

31. (1) Where-

- (a) no appeal under Regulation 28 against an adverse assessment (including the specified sanctions) is lodged with the court within the period for lodging an appeal, or
- (b) an appeal under Regulation 28 against an adverse assessment (including the specified sanctions) which has been lodged with the court within the period for lodging the appeal is withdrawn or abandoned,

then the Bank may apply to the court for an order confirming the adverse assessment (including the specified sanctions).

(2) The court shall determine an application under paragraph (1) by making-

- (a) subject to paragraph (7), 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.

- (3) 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 made pursuant to paragraph (1) has been served on the assessee.

(4) Where the court is satisfied, because of the nature or the circumstances of the case or otherwise in the interests of justice, that it is desirable that the whole or any part of proceedings relating to the application under paragraph (1) should not be heard in public then, where the court so directs, the proceedings may be heard otherwise than in public.

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

(6) 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.

(7) No variation of an adverse assessment under paragraph (2)(a) may provide for the imposition of a sanction on the assessee which is not a sanction referred to in Regulation 32(a) to (e).

*Sanctions that may be imposed by Bank*

32. In the case of an adverse assessment, the Bank may impose on the assessee concerned the following sanctions as are the specified sanctions:

- (a) a private caution or reprimand;
- (b) a public caution or reprimand;
- (c) subject to Regulation 34(2), a direction to pay to the Bank a monetary penalty (but not exceeding €2,500,000 in any case);
- (d) where the assessee continues to commit a prescribed contravention, a direction ordering the person to cease committing the prescribed contravention;
- (e) where an adverse assessment has been issued, a direction to pay the Bank all or a specified part of the costs incurred by it during its investigation (including any costs incurred by authorised officers).

*Publication of sanctions*

33. (1) Subject to paragraph (2), where the Bank has imposed a sanction, the Bank shall publish, in such form and manner as it thinks appropriate, the findings and such (if any) of the particulars specified below, as it considers appropriate:



- (a) the name of the assessee concerned on whom a sanction has been imposed;
- (b) details of the prescribed contravention in respect of which the sanction has been imposed;
- (c) details of the sanction imposed;
- (d) the grounds on which the finding is based.

(2) The Bank shall not publish the particulars referred to in paragraph (1) where the Bank considers that such publication would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

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

34. (1) A sanction referred to in Regulation 32(c), in respect of a prescribed contravention, shall not be imposed on a person where the person has been found guilty or not guilty of having committed an offence under a provision of these Regulations, and all or some of the acts constituting that offence also constitute the prescribed contravention.

(2) Where—

- (a) a sanction, referred to in Regulation 32(c), is to be imposed on the assessee by virtue of an order obtained under Regulation 28(4) or 31(2)(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.

(3) A sanction 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 acts constituting that offence also constitute a prescribed contravention.

*Power of the Bank to resolve suspected contraventions, etc.*

35. (1) Where the Bank has reason to suspect, based on reasonable grounds, that an assessee (in this Regulation referred to as a “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 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 the relevant party in a court of competent jurisdiction.

*Guidelines on the conduct of proceedings under this Part*

36. (1) The Bank may prescribe guidelines with respect to the conduct of assessments by assessors under this Part.

(2) The Bank may at any time amend or revoke guidelines prescribed under this Regulation.

(3) Guidelines prescribed under this Regulation by the Bank, and any amendment to, or revocation of, those guidelines, shall be in writing and be published in a manner determined by the Bank.

*Exercise of supervisory powers and imposition of penalties*

37. The Bank, when imposing a sanction in respect of a contravention of Regulation 648/2012 or a prescribed contravention, shall have regard to all the relevant circumstances including, where appropriate, the following:

- (a) the gravity and duration of the contravention;
- (b) the degree of responsibility of the person responsible for the contravention;
- (c) the financial strength of the person responsible for the contravention, as indicated, for example, by the total turnover of a legal person or the annual income of a natural person;
- (d) the importance of the profits gained or losses avoided by the person responsible for the contravention, insofar as they can be determined;
- (e) the level of cooperation of the person responsible for the contravention with the Bank, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;
- (f) previous contraventions by the person responsible for the breach;
- (g) measures taken by the person responsible for the contravention to prevent its repetition.

*Amendment of Central Bank Act 1942*

38. The Central Bank Act 1942 (No. 22 of 1942) is amended—

- (a) in section 2(2A) (as amended by the European Union (Capital Requirements) (No. 2) Regulations 2014 (S.I. No. 159 of 2014)) by substituting for paragraph (f) the following:

“(f) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013<sup>6</sup>;

(g) Commission Implementing Regulation (EU) No 1249/2012 of 19 December 2012<sup>7</sup>;

(h) Commission Delegated Regulation (EU) No 152/2013 of 19 December 2012<sup>8</sup>;

(i) Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012<sup>9</sup>;

(j) Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July 2012<sup>10</sup>.”,

(b) in section 33AK (as amended by Regulation 153 of the European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014))—

(i) in subsection (5) by substituting for paragraph (as) the following:

“(as) for the purposes of contractual or institutional protection schemes as referred to in Article 113(7) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013<sup>11</sup>, or

(at) for any purpose connected with the functions of the Bank under Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012<sup>12</sup>.”,

and

(ii) in subsection (10), in the definition of “Supervisory Directives”, by substituting for paragraphs (q) and (r) the following:

“(q) Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC<sup>13</sup>,

(r) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive

<sup>6</sup>OJ No. L 132, 16.05.2013, p. 3

<sup>7</sup>OJ No. L 352, 21.12.2012, p. 32

<sup>8</sup>OJ No. L 52, 23.02.2013, p. 37

<sup>9</sup>OJ No. L 52, 23.02.2013, p. 41

<sup>10</sup>OJ No. L 201, 27.07.2012, p. 1

<sup>11</sup>OJ No. L 176, 27.06.2013, p. 1

<sup>12</sup>OJ No. L 201, 27.07.2012, p. 1

<sup>13</sup>OJ No. L 267, 10.10.2009, p. 7

2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC<sup>14</sup>, and

- (s) Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories<sup>15</sup>.”,

and

- (c) in section 33AN (as amended by section 5(1) of the Central Bank (Supervision and Enforcement) Act 2013 (No. 26 of 2013))—

- (i) by substituting for the definition of “designated enactment” the following:

“ ‘designated enactment’ does not include Part 4 or 5 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005, Part 3 of the Investment Funds, Companies and Miscellaneous Provisions Act 2006 or Title II of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012<sup>16</sup>,” and

- (ii) by substituting for the definition of “designated statutory instrument” the following:

“ ‘designated statutory instrument’ does not include the Market Abuse (Directive 2003/6/EC) Regulations 2005 (S.I. No. 342 of 2005), the Prospectus (Directive 2003/71/EC) Regulations 2005 (S.I. No. 324 of 2005), regulations for the time being in force under section 20 of the Investment Funds, Companies and Miscellaneous Provisions Act 2006 or the European Union (European Markets Infrastructure) Regulations 2014 (S.I. No. 443 of 2014);”,

and

- (d) in Part 2 of Schedule 2 (as amended by Regulation 153 of the European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014)) to the Central Bank Act 1942 (No. 22 of 1942) is amended by inserting after the last item the following:

“

55	S.I. No. 443 of 2014	European Union (European Markets Infrastructure) Regulations 2014	The whole instrument
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”

<sup>14</sup>OJ No. L 176, 27.06.2013, p. 338

<sup>15</sup>OJ No. L 201, 27.07.2012, p. 1

<sup>16</sup>OJ No. L 201, 27.07.2012, p. 1

## Part 6

## OFFENCES

*Offences — general*

39. (1) A person, that is a central counterparty or a trading venue, who contravenes—

- (a) a provision of these Regulations, or
- (b) a provision of Regulation 648/2012,

commits an offence

(2) A person who commits an offence under paragraph (1) is liable—

- (a) on summary conviction to a class A fine or imprisonment for a term not exceeding 6 months, or both, or
- (b) on conviction on indictment to a fine not exceeding €500,000 or imprisonment for a term not exceeding 36 months, or both.

*Offence — obstruction of authorised officer in exercise of officer's powers*

40. (1) A person referred to in Regulation 3 who—

- (a) obstructs or interferes with an authorised officer in the exercise of a power conferred by Regulation 7, or
- (b) without reasonable excuse, refuses or fails to comply with a request or requirement of an authorised officer made in accordance with a power conferred by Regulation 7,

commits an offence.

(2) A person who commits an offence under paragraph (1) is liable upon summary conviction to a class A fine or imprisonment for a term not exceeding 12 months, or both.

*Offence — false, etc. information*

41. (1) A person referred to in Regulation 3 who, in purported compliance with a requirement imposed on it under Regulation 648/2012 or these Regulations, provides the Bank with information, knowing it to be false or misleading in a material particular, commits an offence.

(2) A person who commits an offence under paragraph (1) is liable upon summary conviction to a class A fine or imprisonment for a term not exceeding 12 months, or both.

*Liability of directors and others for offences committed by corporate bodies or on behalf of unincorporated bodies*

42. (1) Where an offence under these Regulations is committed by a body corporate and is proved to have been so committed with the consent or connivance of, or to be attributable to any neglect on the part of, a person who is a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, the person also commits an offence and is liable to be proceeded against and punished as if the person were guilty of the first-mentioned offence.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

(3) A company within the meaning of the Companies Acts is deemed to be ordinarily resident at its registered office and every other body corporate and every unincorporated body of persons shall be deemed to be ordinarily resident at its principal office or place of business.

*Prosecution of offences*

43. (1) Summary proceedings for an offence under this Part may be brought and prosecuted by the Bank.

(2) Proceedings for an offence under this Part may be brought not later than 12 months after the date on which the offence is alleged to have been committed.

*Persons to be issued copy of any sanction*

44. Where the Bank imposes a sanction on a person regulated for the purposes of Regulation 648/2012 or these Regulations it shall—

- (a) issue the person to whom the sanction is directed with a copy of the decision to impose the sanction, and
- (b) advise in writing the person to whom the sanction is directed that they may appeal against the decision.

Part 7

FINAL PROVISIONS

*Fines*

45. (1) A fine in respect of a sanction shall be payable to the Bank.

(2) The Bank shall, at regular intervals, but in any case at least every 18 months, publish assessment reports on the effectiveness of the fines being applied, in accordance with Article 12(2) of Regulation 648/2012, and such disclosure and publication shall not contain personal data within the meaning of the Data Protection Acts 1988 and 2003.

*Notices — general*

46. Where a notice is to be issued or given by the Bank under these Regulations to a person, the notice shall be addressed to the person concerned and shall be sent or given to the person—

- (a) by delivering it to the person,
- (b) by leaving it at the address at which the person carries on business,
- (c) by sending it by pre-paid registered post addressed to the person at the address at which the person carries on its business,
- (d) if an address for the service of a notice has been furnished by the person to the Minister, by leaving it at, or sending it by pre-paid registered post addressed to the person to, that address, or
- (e) by sending it by means of electronic mail or a facsimile machine, to a device or facility for the reception of electronic mail or facsimiles located at the address at which the person ordinarily carries on business or, if an address for the issue or giving of notices under these Regulations has been furnished by the person, that address, provided that the sender's—
  - (i) facility for the reception of electronic mail generates a message confirming a receipt of the electronic mail, or
  - (ii) facsimile machine generates a message confirming successful transmission of the total number of pages of the notice,

and the notice is also given in one of the other ways mentioned in any of the preceding subparagraphs.



GIVEN under my Official Seal,  
8 October 2014.

MICHAEL NOONAN,  
Minister for Finance.

EXPLANATORY NOTE

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

These Regulations give effect to EU Regulation No 648/2012 of 4 July 2012 on OTC derivatives, central counterparties and trade repositories. This EU Regulation, also referred to as the European Markets Infrastructure Regulation (EMIR), seeks to make over the counter (OTC) derivative markets safer through increasing transparency, laying down clearing and risk management requirements for OTC contracts and rules in relation to the performance of activities of central counterparties (CCPs) and trade repositories.

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