



STATUTORY INSTRUMENTS.

**S.I. No. 349 of 2016**



EUROPEAN UNION (MARKET ABUSE) REGULATIONS 2016

## EUROPEAN UNION (MARKET ABUSE) REGULATIONS 2016

I, MICHAEL NOONAN, the Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving full effect to Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014<sup>1</sup> and giving effect to Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014<sup>2</sup> and Commission Implementing Directive (EU) 2015/2392 of 17 December 2015<sup>3</sup>, hereby make the following regulations:

## PART 1

## PRELIMINARY

*Citation and commencement*

1. (1) These Regulations may be cited as the European Union (Market Abuse) Regulations 2016.

(2) These Regulations shall come into operation on 3 July 2016.

*Interpretation*

2. (1) In these Regulations—

“Bank” means the Central Bank of Ireland;

“Court” means the High Court;

“CSMA Directive” means Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive)<sup>2</sup>;

“Commission Implementing Directive” means Commission Implementing Directive (EU) 2015/2392 of 17 December 2015 on Regulation (EU) No 596/2014 of the European Parliament and of the Council as regards reporting to competent authorities of actual or potential infringements of that Regulation<sup>3</sup>;

“Irish market abuse law” means—

(a) regulations for the time being in force under section 3 of the European Communities Act 1972, including these Regulations, made for the purpose of giving—

<sup>1</sup>OJ L 173, 12.6.2014, p. 1.

<sup>2</sup>OJ L 173, 12.6.2014, p. 179.

<sup>3</sup>OJ L 332, 18.12.2015, p. 126.

*Notice of the making of this Statutory Instrument was published in  
“Iris Oifigiúil” of 8th July, 2016.*

- (i) full effect to provisions of the Market Abuse Regulation, or
  - (ii) effect to provisions of the Commission Implementing Directive or the CSMA Directive,
- or both,
- (b) any enactment, or rules under any enactment, enacted or made for the purpose of giving—
    - (i) full effect to provisions referred to in paragraph (a)(i) of this definition, or
    - (ii) effect to provisions referred to in paragraph (a)(ii) of this definition,
 or both,
  - (c) any measures directly applicable in the State in consequence of the Market Abuse Regulation, and
  - (d) any supplementary and consequential measures adopted for the time being by the State in respect of the Market Abuse Regulation, the Commission Implementing Directive or the CSMA Directive;

“personal data” has the same meaning as it has in the Data Protection Act 1998;

“record” means any book, document or any other written or printed material in any form and 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, including any audio recording;

“Market Abuse Regulation” means Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC, and 2004/72/EC;

“regulated financial service provider” has the same meaning as it has in section 2(1) of the Central Bank Act 1942 (No. 22 of 1942);

“relevant community acts” means—

- (a) the Market Abuse Regulation,
- (b) the CSMA Directive, and
- (c) the Commission Implementing Directive;

“relevant record” means a record relating to activities of persons to whom these Regulations and the Market Abuse Regulation apply.

(2) A word or expression that is used in these Regulations and is also used in the relevant community acts has, unless the context otherwise requires, the same meaning in these Regulations as it has in the relevant community acts.

*Competent authority*

3. The Bank is designated as the single administrative competent authority for the purpose of the Market Abuse Regulation.

PART 2

CRIMINAL SANCTIONS FOR MARKET ABUSE

*Application*

4. (1) This Part applies to a financial instrument—

- (a) admitted to trading on a regulated market or for which a request for admission to trading on a regulated market has been made,
- (b) traded on, admitted to trading on, or for which a request for admission to trading on a multilateral trading facility has been made,
- (c) traded on an organised trading facility, or
- (d) not falling within any of subparagraphs (a) to (c), the price or value of which depends on, or has an effect on, the price or value of a financial instrument referred to in any of those subparagraphs, including, but not limited to, a credit default swap and a contract for difference.

(2) This Part also applies to behaviour or transactions, including bids, relating to the auctioning on an auction platform authorised as a regulated market of emission allowances or other auctioned products based thereon, including when auctioned products are not financial instruments, pursuant to Commission Regulation (EU) No 1031/2010<sup>4</sup>, and without prejudice to any specific provisions of this Part that relate to bids submitted in the context of an auction, any provisions of this Part that relate to orders to trade shall apply to such bids.

(3) This Part does not apply to—

- (a) trading in own shares in buy-back programmes, where such trading is carried out in accordance with Article 5(1), (2) and (3) of the Market Abuse Regulation,
- (b) trading in securities or associated instruments as referred to in Article 3(2)(a) and (b) of the Market Abuse Regulation for the stabilisation of securities, where such trading is carried out in accordance with Article 5(4) and (5) of that Regulation, or
- (c) transactions, orders or behaviours carried out in pursuit of monetary, exchange rate or public debt management policy in accordance with

<sup>4</sup>OJ L 302, 18.11.2010, p. 1.

Article 6(1) of the Market Abuse Regulation, transactions order or behaviours carried out in accordance with Article 6(2) of that Regulation, activities in pursuit of the Union's climate policy in accordance with Article 6(3) of that Regulation, or activities in pursuit of the Union's Common Agricultural Policy or the Union's Common Fisheries Policy in accordance with Article 6(4) of that Regulation.

(4) Without prejudice to paragraph (1) or (2), Regulation 7 also applies to—

(a) spot commodity contracts that are not wholesale energy products, where the transaction, order or behaviour has an effect on the price or value of a financial instrument referred to in paragraph (1),

(b) types of financial instruments, including derivative contracts or derivative instruments for the transfer of credit risk, if the transaction, order, bid or behaviour has an effect on the price or value of a spot commodity contract in circumstances where the price or value of that contract depends on the price or value of those financial instruments, and

(c) behaviour in relation to benchmarks.

(5) This Part applies to any transaction, order or behaviour concerning any financial instrument referred to in paragraph (1), (2) or (4), irrespective of whether or not such transaction, order or behaviour takes place on a trading venue.

(6) This Part is without prejudice to the Criminal Law Act 1997 (No. 14 of 1997).

#### *Insider dealing*

5. (1) A person who engages, or attempts to engage, in insider dealing (within the meaning of paragraph (4) or (6)) commits an offence.

(2) A person who recommends or induces (within the meaning of paragraph (5)), or attempts to so recommend or induce, another person to engage in insider dealing (within the meaning of paragraph (4) or (6)) commits an offence.

(3) A person who incites, aids or abets another person to engage in insider dealing (within the meaning of paragraph (4) or paragraph (6)) commits an offence.

(4) A person engages in insider dealing where the person possesses inside information as a result of any of the circumstances referred to in paragraph (7) and uses the information by—

(a) acquiring or disposing of, for the person's own account or for the account of a third party, directly or indirectly, financial instruments to which that information relates,

- (b) cancelling or amending an order concerning a financial instrument to which that information relates where the order was placed before that person possessed that information, or
  - (c) in relation to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (EU) No 1031/2010<sup>4</sup>, submitting, modifying or withdrawing a bid for the person's own account or for the account of a third party.
- (5) A person recommends or induces another person to engage in insider dealing where the person possesses inside information as a result of any of the circumstances referred to in paragraph (7) and—
- (a) recommends, on the basis of the information, that another person acquire or dispose of financial instruments to which that information relates, or induces that person to make such an acquisition or disposal, or
  - (b) recommends, on the basis of that information, that another person cancel or amend an order concerning a financial instrument to which that information relates, or induces that person to make such a cancellation or amendment.
- (6) A person also engages in insider dealing where the person uses a recommendation or inducement referred to in paragraph (5) in the knowledge that the recommendation or inducement was based on inside information.
- (7) The circumstances for the purposes of paragraphs (4) and (5) and Regulation 6(3) are as follows:
- (a) being a member of the administrative, management or supervisory body of the issuer of the financial instrument concerned or emission allowance market participant;
  - (b) having a holding in the capital of the issuer of the financial instrument concerned or emission allowance market participant;
  - (c) having access to the information through the exercise of an employment, profession or duties;
  - (d) being involved in criminal activities;
  - (e) circumstances other than those referred to in any of subparagraphs (a) to (d) where the person concerned knows that the information is inside information.

*Unlawful disclosure of inside information*

6. (1) Subject to paragraph (5), a person who engages in unlawful disclosure of inside information (within the meaning of paragraph (3) or (4)) commits an offence.

(2) Subject to paragraph (5), a person who incites, aids or abets another person to engage in unlawful disclosure of inside information (within the meaning of paragraph (3) or (4)) commits an offence.

(3) A person engages in unlawful disclosure of inside information where the person possesses the information as a result of any of the circumstances referred to in Regulation 5(7) and discloses it to any other person, other than—

- (a) where the disclosure is made in the normal exercise of an employment, a profession or duties, or
- (b) where the disclosure qualifies as a market sounding made in compliance with Article 11(1) to (8) of the Market Abuse Regulation.

(4) A person also engages in unlawful disclosure of inside information where the person discloses a recommendation or inducement referred to in Regulation 5(5) in the knowledge that the recommendation or inducement was based on inside information.

(5) In proceedings for an offence under this Regulation, it shall be a defence to prove both of the following:

- (a) that the acts constituting the offence involved the disclosure or dissemination of information or recommendations for the purpose of journalism or other form of expression in the media;
- (b) that such disclosure or dissemination was justified having regard to either or both of the freedoms referred to in Article 4(5) of the CSMA Directive.

(6) Without prejudice to paragraph (5), in considering the sentence to be imposed on a person convicted of an offence under this Regulation, the matters to which a court shall have regard shall include any evidence adduced in the proceedings that the acts constituting the offence involved a disclosure or dissemination falling within paragraph (5)(a).

#### *Market manipulation*

7. (1) A person who engages or attempts to engage in market manipulation (within the meaning of paragraph (3)) commits an offence.

(2) A person who incites, aids or abets another person to engage in market manipulation (within the meaning of paragraph (3)) commits an offence.

(3) For the purposes of this Regulation, “market manipulation” means any of the following activities:

- (a) entering into a transaction, placing an order to trade or any other behaviour which—

- (i) gives false or misleading signals as to the supply of, demand for, or price of, a financial instrument or a related spot commodity contract, or
  - (ii) secures the price of one or several financial instruments or a related spot commodity contract at an abnormal or artificial level, unless the reasons for such activities are legitimate, and those transactions or orders to trade are in conformity with accepted market practices on the trading venue concerned;
- (b) entering into a transaction, placing an order to trade or any other activity or behaviour which—
- (i) affects the price of one or several financial instruments or a related spot commodity contract, and
  - (ii) employs a fictitious device or any other form of deception or contrivance;
- (c) disseminating information through the media, including the internet, or by any other means, which gives false or misleading signals as to the supply of, demand for, or price of a financial instrument, or a related spot commodity contract, or secures the price of one or several financial instruments or a related spot commodity contract at an abnormal or artificial level, where the person who disseminated the information derives for himself or herself or for another person an advantage or profit from the dissemination of the information in question;
- (d) transmitting false or misleading information or providing false or misleading inputs or any other behaviour which manipulates the calculation of a benchmark.

*Market abuse occurring outside the State*

8. (1) A citizen of Ireland who, in a place outside the State, engages in conduct that would, if the conduct occurred in the State, constitute an offence under Regulation 5, 6 or 7 commits an offence, where the conduct constitutes an offence in that place.

(2) Proceedings for an offence under this Regulation may be taken in any place in the State and the offence may for all incidental purposes be treated as having been committed in that place.

(3) Where a citizen of Ireland is charged with an offence under this Regulation, no further proceedings in the matter (other than any remand in custody or on bail) may be taken except by, or with the consent of, the Director of Public Prosecutions.

(4) In any proceedings for an offence under this Regulation, a certificate purporting to be signed by an officer of the Department of Foreign Affairs and Trade and stating that—



- (a) a passport was issued by that Department to a person on a specified date, and
- (b) to the best of the officer's knowledge and belief, the person has not ceased to be an Irish citizen,

is evidence that the person was an Irish citizen on the date on which the offence is alleged to have been committed, and is taken to have been signed by the person purporting to have signed it, unless the contrary is shown.

(5) A citizen of Ireland who has been acquitted or convicted of an offence in a place outside the State shall not be proceeded against for an offence under this Regulation consisting of the conduct, or substantially the same conduct, that constituted the offence of which the person has been acquitted or convicted.

*Liability of legal persons*

9. (1) This Regulation—

- (a) is without prejudice to the other circumstances, under the general law, whereby acts of a natural person are attributed to a legal person resulting in criminal liability of that legal person for those acts, and
- (b) does not exclude criminal proceedings against natural persons who are involved as perpetrators, inciters or accessories in an offence under Regulation 5, 6, 7 or 8.

(2) If a person commits one or more acts for the benefit of a legal person and the following conditions are satisfied—

- (a) the first-mentioned person stands (at the time of the commission of those acts) in the relationship to that legal person specified in paragraph (3), and
- (b) those acts constitute an offence under Regulation 5, 6, 7 or 8,

then that legal person, as well as the first-mentioned person, shall be guilty of an offence and liable to be proceeded against and punished as if it were guilty of the first-mentioned offence, and it is immaterial, for the purposes of this Regulation, whether the first-mentioned person was acting individually (as distinct from acting as part of an organ of the legal person).

(3) The relationship, mentioned in subparagraph (a) of paragraph (2), of the first-mentioned person in that paragraph to the legal person referred to therein is that the first-mentioned person has a leading position within that legal person based on—

- (a) a power of representation of that legal person,
- (b) an authority to take decisions on behalf of that legal person, or
- (c) an authority to exercise control within that legal person.

(4) If a person under the authority of a legal person commits one or more acts for the benefit of the legal person and the following conditions are satisfied:

- (a) the commission of those acts was attributable to the requisite degree of supervision or control of the first-mentioned person by another person (the “third person”) not having been exercised;
- (b) the third person stands (at the time of the commission of those acts) in the relationship to that legal person specified in paragraph (6), and
- (c) those acts constitute an offence under Regulation 5, 6, 7 or 8,

then that legal person, as well as the first-mentioned person, shall be guilty of an offence and liable to be proceeded against and punished as if it were guilty of the first-mentioned offence and it is immaterial, for the purposes of this Regulation, whether, at the time the foregoing degree of supervision or control was not exercised, the third person was acting individually (as distinct from acting as part of an organ of the legal person).

(5) The reference in paragraph (4)(a) to the requisite degree of supervision or control is a reference to the degree of supervision or control (of the first-mentioned person in paragraph (4)) that ought to have been exercised in the circumstances by the third person mentioned in that paragraph.

(6) The relationship, mentioned in paragraph (4)(b), of the third person to the legal person referred to therein is that the third person has a leading position within that legal person based on—

- (a) a power of representation of that legal person,
- (b) an authority to take decisions on behalf of that legal person, or
- (c) an authority to exercise control within that legal person.

#### *Penalties*

10. A person who commits an offence under Regulation 5, 6, 7, 8 or 9 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 €500,000 or imprisonment for a term not exceeding 3 years or both.

#### *Summary proceedings may be brought by the Bank*

11. Summary proceedings for an offence under these Regulations may be brought and prosecuted by the Bank.

#### *Continuing contravention*

12. Where a person continues to contravene a provision of these Regulations in respect of which he or she has been convicted, he or she shall be guilty of an

offence on every day on which the contravention continues after the original conviction and for each such offence he or she shall be liable on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or both for each such further offence.

*Offences by bodies corporate*

13. 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 any person, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in such capacity, that person shall, as well as the body corporate, be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

### PART 3

#### REPORTING OF MARKET ABUSE

*Interpretation and saver*

14. (1) In this Part—

“dedicated staff member” shall be construed in accordance with Regulation 15;

“report of infringement” means a report submitted by the reporting person to the Bank regarding an actual or potential infringement of the Market Abuse Regulation;

“reported person” means a person who is alleged to have committed, or to have intended to commit, an infringement of the Market Abuse Regulation by the reporting person;

“reporting person” means a person reporting an actual or potential infringement of the Market Abuse Regulation to the Bank.

(2) This Part is without prejudice to the Protected Disclosures Act 2014 (No. 14 of 2014) and Part 5 of the Central Bank (Supervision and Enforcement) Act 2013 (No. 26 of 2013).

*Dedicated staff members*

15. (1) The Bank shall have staff members dedicated to handling reports of infringements (in this Part referred to as “dedicated staff members”) and shall ensure that those staff members are trained for the purposes of handling reports of infringements.

(2) Dedicated staff members shall perform the following functions:

- (a) providing any interested person with information on the procedures for reporting infringements;
- (b) receiving and following up on reports of infringements;

- (c) maintaining contact with the reporting person where that person has identified himself or herself.

*Information regarding receipt of reports of infringements*

16. The Bank shall publish on a separate, easily identifiable and accessible section of its website the following information:

- (a) the communication channels for receiving and following-up on reports of infringements and for contacting the dedicated staff members in accordance with Regulation 18(1), including—
  - (i) the phone numbers, indicating whether conversations are recorded or unrecorded when using those phone lines, and
  - (ii) dedicated electronic and postal addresses, which are secure and ensure confidentiality, to contact the dedicated staff members;
- (b) a clear outline of the procedures applicable to reports of infringements as set out in Regulation 17;
- (c) the confidentiality regime applicable to reports of infringements in accordance with the procedures set out in Regulation 17;
- (d) the procedures for the protection of persons working under a contract of employment (within the meaning of section 3 of the Protected Disclosures Act 2014 (No. 14 of 2014));
- (e) a statement clearly explaining that persons making information available to the Bank in accordance with the Market Abuse Regulation or these Regulations are not considered to be—
  - (i) infringing any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, or
  - (ii) involved in liability of any kind related to such disclosure.

*Procedure applicable to reports of infringements*

17. (1) The procedures applicable to reports of infringements referred to in Regulation 16(b) shall clearly indicate all of the following information:

- (a) that reports of infringements may be submitted anonymously;
- (b) the manner in which the Bank may require the reporting person to clarify the information reported or to provide additional information that is available to that person;
- (c) the type, content and timeframe of the feedback about the outcome of the report of infringement that the reporting person can expect after making the report;

- (d) the confidentiality regime applicable to reports of infringements, including a detailed description of the exceptional circumstances under which the confidential data of a reporting person may be disclosed in accordance with Articles 27, 28 and 29 of the Market Abuse Regulation.

(2) The detailed description referred to in subparagraph (d) of paragraph (1) shall ensure that the reporting person is aware of the exceptional cases in which confidentiality of data may not be guaranteed, including cases in which the disclosure of data is a necessary and proportionate obligation required by law, and subject to appropriate safeguards under such laws—

- (a) in the context of investigations or subsequent judicial proceedings, or
- (b) to safeguard the freedoms of others including the right of defence of the reported person.

*Dedicated communication channels*

18. (1) The Bank shall establish independent and autonomous communication channels (in this Regulation referred to as “dedicated communication channels”), which are both secure and ensure confidentiality, for receiving and following up on the reporting of infringements.

(2) Dedicated communication channels shall be considered independent and autonomous where they—

- (a) are separated from general communication channels of the Bank, including those through which the Bank communicates internally and with third parties in its ordinary course of business,
- (b) are designed, set up and operated in a manner that ensures the completeness, integrity and confidentiality of the information and prevents access to non-authorised staff members of the Bank, and
- (c) enable the storage of durable information in accordance with Regulation 19 to allow for further investigations.

(3) The dedicated communication channels shall allow for reporting of actual or potential infringements in at least all of the following ways:

- (a) written report of infringements in electronic or paper format;
- (b) oral report of infringements through telephone lines, whether recorded or unrecorded;
- (c) meeting in person with dedicated staff members of the Bank.

(4) The Bank shall provide the information referred to in Regulation 16 to the reporting person before receiving the report of infringement or, at the latest, immediately following receipt of the report of infringement.

(5) The Bank shall ensure that a report of infringement received by means other than those set out in this Regulation is promptly forwarded without modification to a dedicated staff member of the Bank by using the dedicated communication channels.

*Record-keeping of reports received*

19. (1) The Bank shall keep records of every report of infringement received.

(2) The Bank shall promptly acknowledge the receipt of written reports of infringements to the postal or electronic address indicated by the reporting person, unless the reporting person explicitly requested otherwise or the Bank reasonably believes that acknowledging receipt of a written report would jeopardise the protection of the reporting person's identity.

(3) Where a recorded telephone line is used for reporting of infringements, the Bank may document the oral reporting in the form of—

- (a) an audio recording of the conversation in a durable and retrievable form, or
- (b) a complete and accurate transcript of the conversation prepared by a dedicated staff member of the Bank.

(4) Where an unrecorded telephone line is used for reporting of infringements, the Bank may document the oral reporting in the form of accurate minutes of the conversation prepared by a dedicated staff member of the Bank.

(5) Where a reporting person has disclosed his or her identity, and the Bank has documented the reporting in the form of a transcript or minutes in accordance with paragraph (3) or (4), the Bank shall offer the person the opportunity to check, rectify and agree by way of signature the transcript or minutes.

(6) Where a person requests a meeting in person with a dedicated staff member of the Bank for the purpose of reporting an infringement in accordance with Regulation 18(3)(c)—

- (a) the Bank shall ensure that complete and accurate records of the meeting are kept in a durable and retrievable form, and
- (b) the Bank may document the records of the meeting in the form of—
  - (i) an audio recording of the conversation in a durable and retrievable form, or
  - (ii) accurate minutes of the meeting prepared by a dedicated staff member of the Bank, and in cases where the reporting person has disclosed his or her identity, the Bank shall offer the possibility to the reporting person to check, rectify and agree with the minutes of the meeting by signing them.

*Protection of persons working under a contract of employment*

20. (1) The Bank shall cooperate and, where permitted by law, exchange information with the Workplace Relations Commission and any other relevant authority for the purpose of protecting employees who are either—

- (a) reporting persons, or
- (b) reported persons,

against retaliation, discrimination or other unfair treatment, arising due to or in connection with reporting of infringements of the Market Abuse Regulation.

(2) The Bank shall—

- (a) refer reporting persons who are employees to the Workplace Relations Commission with a view to ensuring such persons have access to comprehensive information and advice on the remedies and procedures available to protect them against unfair treatment, including on the procedures for claiming pecuniary compensation, and
- (b) assist a reporting person who is an employee in any appearance before the Workplace Relations Commission, the Labour Court or any other relevant authority, including by certifying that the person is a reporting person under these Regulations.

*Protection procedures for personal data*

21. (1) The Bank shall store the records referred to in Regulation 19 in a confidential and secure system.

(2) Access to the system referred to in paragraph (1) shall be subject to restrictions ensuring that the data stored therein is only available to staff members of the Bank for whom access to that data is necessary to perform their professional duties.

*Transmission of data inside and outside of the Bank*

22. (1) The Bank shall have in place adequate procedures for the transmission of personal data of the reporting person and reported person inside and outside of the Bank.

(2) The Bank shall ensure that the transmission of data related to a report of infringement within or outside the Bank does not reveal, directly or indirectly, the identity of the reporting person or reported person or any other references to circumstances that would allow the identity of the reporting person or reported person to be deduced, unless such transmission is in accordance with the confidentiality regime referred to in Regulation 17(1)(d).

*Procedures for the protection of the reported persons*

23. (1) Where the identity of reported persons is not known to the public, the Bank shall ensure that their identity is protected at least in the same manner as for persons that are under investigation by the Bank.

(2) The procedures set out in Regulation 21 shall also apply for the protection of the identity of reported persons.

*Review of procedures by Bank*

24. (1) The Bank shall, every two years, review its procedures for receiving reports of infringements of the Market Abuse Regulation and following up on such reports of infringements.

(2) In carrying out a review under paragraph (1), the Bank shall take account of its experience and that of other competent authorities in order to adapt its procedures where appropriate or necessitated by market or technological developments.

*Procedures for reporting of infringements — regulated financial service providers*

25. Regulated financial service providers shall put in place appropriate internal procedures to facilitate their employees in reporting actual or potential contraventions of the Market Abuse Regulation.

PART 4

POWERS OF BANK

*Powers of Bank*

26. (1) The Bank shall have all the powers necessary for the performance of its functions under the Market Abuse Regulation 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 the Bank's obligations pursuant to the Market Abuse Regulation or these Regulations.

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

(4) The powers provided for in this Part in respect of the Bank shall be without prejudice to any requirements imposed by the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006 (S.I. No. 255 of 2006).

*Power to appoint authorised officers*

27. (1) The Bank may, in writing, appoint persons as authorised officers for the purposes of monitoring compliance with the Market Abuse Regulation 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 his or her appointment as an authorised officer.



(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*

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

- (a) subject to Regulation 29(1), at all reasonable times enter any place at which the authorised officer reasonably believes there are relevant records;
- (b) subject to Regulation 29(1), enter any place without prior notice, at which the authorised officer reasonably believes that documents or data relating to the subject matter of an inspection or investigation may be relevant to prove a case of insider dealing or market manipulation infringing the Market Abuse Regulation or these Regulations;
- (c) in relation to commodity derivatives—
  - (i) request information from market participants on related spot markets according to standardised formats,
  - (ii) obtain reports on transactions, and
  - (iii) have direct access to traders' systems;
- (d) search and inspect a place and any relevant records at that place;
- (e) 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;

- (f) 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) give the authorised officer such information as that officer reasonably requires regarding entries in them;
- (g) 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);
- (h) 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;
  - (i) 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;
- (j) 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 to which the Market Abuse Regulation and these Regulations apply and to produce all relevant records that the person has in their possession or to which they have access;
- (k) 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;
- (l) require a person at a place to explain entries in relevant records to the authorised officer;
- (m) summon, at any reasonable time, a person to give to the authorised officer such information as the authorised officer may reasonably require and to require the person to answer questions and to make a declaration of the truth of the answers to those questions.

(2) Where a person from whom production of a relevant record is required under this Regulation claims a lien over it, its production shall not affect the lien.

(3) A person making information available to the Bank in accordance with this Regulation shall not, in so doing, be considered to be infringing any restriction on disclosure of information imposed by contract or law and, accordingly, shall not be liable for making the information so available.

(4) 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.

(5) When exercising a power under this Part, an authorised officer may, where the officer considers it necessary, be accompanied by one or more members of the Garda Síochána or authorised officers.

(6) 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*

29. (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 28 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 paragraph (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 comprises, or forms 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 necessary by force, the place or private dwelling and exercise any of the powers referred to in Regulation 28.

*Directions by Bank*

30. (1) Without prejudice to the power of the Bank to impose directions, conditions or other requirements under any enactment, where the Bank considers it necessary to do so in order to—

- (a) ensure the integrity of financial markets in—
  - (i) the State, or
  - (ii) where relevant, another Member State,
- (b) enhance investor confidence in those markets, or
- (c) prevent any person from contravening or continuing to contravene a provision of Irish market abuse law,

the Bank may, subject to paragraphs (2) and (3), issue a direction in writing to any person.

(2) A direction under paragraph (1) 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, and
- (b) shall 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 immediately following the day on which the direction takes effect,

whichever is the earlier.

(3) A direction under paragraph (1) shall be a direction to do one or more of the following:

- (a) suspend the trading of any financial instrument,
- (b) not to dispose of or otherwise dissipate any assets or specified assets of any person or not to do any of those things save where specified conditions are complied with;
- (c) not to dispose of or otherwise dissipate any assets or specified assets the beneficial interest in which is vested in another person or persons or not to do any of those things save where specified conditions are complied with;
- (d) being a credit institution, not to make any payments from an account held with the institution by a specified person or persons save with the prior consent of the Bank;
- (e) not to accept, process or execute any further subscription or orders on behalf of a specified person;
- (f) not to carry on a business (whether on the person's behalf or another's behalf) in a specified manner or otherwise than in a specified manner;
- (g) not to engage in any practice that contravenes a provision of Irish market abuse law;
- (h) not to enter into of transactions of a specified kind or not to enter into such transactions except to a specified extent or except where specified conditions are complied with;
- (i) not to publish a specified recommendation;
- (j) to publish or disseminate in a specified manner information relating to a recommendation or an issuer or a financial instrument.

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

(5) The Bank may, as respects a direction under this Regulation which, in its opinion, has not been complied with or is unlikely to be complied with (or, in the case of a direction referred to in paragraph (3)(b) or (c), irrespective of whether it is of that opinion), apply to the Court in a summary manner for such order as may be appropriate by way of enforcement of the direction and the Court may, as it thinks fit, on the hearing of the application, make or refuse to make an order providing for such relief.

(6) An application for an order under paragraph (5) shall be by motion and the Court, when considering the motion, may make such interim or interlocutory order as it considers appropriate.

(7) An application under paragraph (4) may not be made if the direction concerned has been the subject of an order granted under paragraph (5) (but

without prejudice to the right of a person, the subject of an order granted under paragraph (5), to apply subsequently to the Court to have the order varied or discharged).

(8) The Court may direct the hearing together of applications made under paragraphs (4) and (5) that relate to the same direction.

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

(10) If the Court is satisfied that it is desirable that the whole or part of proceedings relating to an application under paragraph (4) of (5) be heard otherwise than in public because of the nature or the circumstances of the case or having regard to the interests of justice then the Court may make an order that the proceedings shall, in whole or part, be heard otherwise than in public.

(11) Without prejudice to the powers of the Court to enforce an order made under paragraph (5), a person who fails to comply with such an order shall be guilty of an offence and shall be liable on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or both.

(12) The Bank may give a direction amending or revoking a direction given by it under paragraph (1) but this power may not be exercised—

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

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

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

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

(15) In this Regulation, “enactment” includes an instrument made under an enactment.

### *Privilege*

31. (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—

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

(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 subparagraph (f) or (j) of Regulation 28(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) shall be by motion.

(6) If the Court is satisfied that it is desirable that the whole or part of an application under paragraph (1) be heard otherwise than in public because of the nature or the circumstances of the case or having regard to the interests of justice then the Court may make an order that the application shall, in whole or part, be heard otherwise than in public.

(7) 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.

*Delegations, etc.*

32. (1) The Bank may perform any of its functions under the relevant community acts—

- (a) directly,

- (b) in collaboration with other authorities or market undertakings,
- (c) by delegation in accordance with paragraph (2), or
- (d) by application to the Court.

(2) The Bank may delegate in writing to such other authorities or market undertakings as it considers appropriate any one or more of its functions under the Market Abuse Regulation or these Regulations subject to such conditions as are specified in the delegation.

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

(4) Notwithstanding any delegation under this Regulation, the final responsibility for supervising compliance with the relevant community acts and these Regulations shall be with the Bank.

*Obstruction, failure to cooperate etc. — offences*

33. A person who—

- (a) obstructs an authorised officer in the exercise of the powers of an authorised officer under this Part,
- (b) without reasonable excuse, fails to comply with a request or requirement made by such an officer under this Part,
- (c) without reasonable excuse, fails to cooperate with an investigation or an inspection by such an officer under this Part,
- (d) gives such an officer information that the person knows or ought reasonably to know is false or misleading in a material particular, or
- (e) without reasonable excuse, fails to comply with a request made by a member of the Garda Síochána under section 6(1) of the Communications (Retention of Data) Act 2011 for the purposes of the prevention, detection, investigation or prosecution of an offence under Regulation 5 or 7,

shall be guilty of an offence and shall be liable—

- (i) on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or both, or
- (ii) on conviction on indictment to a fine not exceeding €500,000 or imprisonment for a term not exceeding 3 years or both.



## PART 5

## ADMINISTRATIVE SANCTIONS

*Interpretation (Part 5)*

34. (1) In this Part—

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

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

“assessment” means an assessment referred to in Regulation 35;

“assessor” means an assessor appointed under Regulation 35;

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

“prescribed contravention” means a contravention of any of the following provisions of the Market Abuse Regulation:

- (a) Article 14;
- (b) Article 15;
- (c) Article 16(1) or (2);
- (d) Article 17(1), (2), (4), (5), or (8);
- (e) Article 18(1) to (6);
- (f) Article 19(1), (2), (3), (5), (6), (7) or (11);
- (g) Article 20(1);

“qualifying holding” means—

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

“sanction” means any sanction referred to in Regulation 41(1)(a) to (l);

“specified sanctions”, in relation to an adverse assessment, means the sanction or sanctions referred to in Regulation 35(8)(c) that may be imposed on the assessee;

*Bank may appoint assessor*

35. (1) Where the Bank has reason to suspect that a prescribed contravention is being committed or has been committed, 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) if 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 the assessor’s appointment as an assessor, give notice of the appointment to the assessee.

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

- (a) a statement that the assessor is appointed by the Bank under this Regulation,
- (b) a statement in summary form of the grounds for conducting the assessment,
- (c) a statement that, within a reasonable time specified by the assessor in the notice, the assessee may—
  - (i) make submissions in writing to the assessor, and
  - (ii) request the assessor to be permitted to make oral submissions about the matters to which the notice relates, and
- (d) a statement that the assessor shall conduct the assessment even if no submissions referred to in subparagraph (c) are made.

(6) The assessor shall—

- (a) consider any submissions 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 40 and 43(2), the assessment shall constitute the decision of the Bank, and references in this Part to an adverse assessment shall be construed accordingly.

*Revocation of appointment of assessor*

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

(2) The assessor (including a person proposed to be appointed 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 inside 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) issue an assessment that is not contrary to law.

*Power to require witnesses to appear and give evidence*

37. (1) The assessor may, by notice given in or outside the State to a person, require the person to—

- (a) appear before the assessor to give evidence (including evidence on oath),
- (b) produce documents specified in the notice that are in the person's custody or control, or
- (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 published, or
- (f) does anything else that, if the assessor were a court of law having power to commit for contempt, would be contempt for that court,

then—

- (i) the assessor may apply to the Court for an order requiring the person concerned to—
  - (I) comply with the notice under paragraph (1), or

- (II) 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, may grant the order and such other orders as it considers appropriate to ensure that the person concerned cooperates with the assessor.

*Referral to the Court on a question of law*

38. (1) The Bank or the assessor may (including at the request of the assessee) refer a question of law arising in the assessment to the Court for determination by the Court.

(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.*

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

- (a) issue the assessee with a copy of the adverse assessment (or, as the Bank thinks fit, so much of the adverse assessment as constitutes the statements referred to in Regulation 35(8)), and
- (b) advise the assessee that—
  - (i) the assessee may appeal against the adverse assessment to the Court under Regulation 40, and
  - (ii) the Bank may apply to the Court under Regulation 45 for an order confirming the adverse assessment (including the specified sanctions).

(2) Where the assessment of the assessor is that the assessee is neither committing nor has committed a prescribed contravention, the Bank shall issue the assessee with a statement to that effect.

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

40. (1) The assessee may appeal against the adverse assessment (including the specified sanctions) to the Court not later than 28 days after the Bank has complied with Regulation 39(1) in relation to the assessee or within such further period as the Court allows.

(2) If the Court is satisfied that it is desirable that the whole or part of proceedings relating to an appeal under paragraph (1) be heard otherwise than in public because of the nature or the circumstances of the case or having regard to the interests of justice then the Court may make an order that the proceedings shall, in whole or part, 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 Court of Appeal 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 41(1)(a) to (l).

*Sanctions that may be imposed by Bank*

41. (1) In the case of an adverse assessment, the Bank may impose on the assessee one or more of the following sanctions as specified by the assessor under Regulation 35(8)(c);

- (a) a direction ordering the assessee to cease the prescribed contravention and to take such measures as are necessary to prevent a repeat of the prescribed contravention;
- (b) the disgorgement of the profits gained or losses avoided due to the prescribed contravention insofar as they can be determined;
- (c) a private caution or reprimand;
- (d) a public warning that identifies the assessee and the nature of the prescribed contravention;
- (e) withdrawal and suspension of the authorisation of any regulated financial service provider;
- (f) a direction disqualifying the assessee from being concerned in the management of, or having a qualifying holding in, any regulated financial service provider for such time as is specified in the order;

- (g) in the case of repeated contraventions of Article 14 or 15 of the Market Abuse Regulation by an assessee, a direction permanently disqualifying the assessee from being concerned in the management of, or having a qualifying holding in, any regulated financial service provider;
  - (h) where an assessee is discharging managerial responsibilities within a regulated financial service provider, a direction disqualifying the assessee from dealing on their own account for such time as is specified in the order;
  - (i) a direction to pay to the Bank all or a specified part of the costs incurred by the Bank in investigating the matter to which the assessment relates and in holding the assessment (including any costs incurred by authorised officers);
  - (j) a direction to pay to the Bank an amount not exceeding three times the amount of the profits gained or losses avoided because of the prescribed contravention, where those profits or losses can be determined;
  - (k) subject to Regulation 47(2), where the assessee is a natural person, a direction to pay to the Bank a monetary penalty not exceeding—
    - (i) in the case of a contravention of Article 14 or 15 of the Market Abuse Regulation, €5,000,000,
    - (ii) in the case of a contravention of Article 16 or 17 of the Market Abuse Regulation, €1,000,000, or
    - (iii) in the case of a contravention of Article 18, 19 or 20 of the Market Abuse Regulation, €500,000;
  - (l) subject to Regulation 47(2), where the assessee is a legal person, a direction to pay to the Bank a monetary penalty not exceeding—
    - (i) in the case of a contravention of Article 14 or 15 of the Market Abuse Regulation, €15,000,000 or 15 per cent of the total annual turnover of the legal person according to the last available accounts approved by the management body,
    - (ii) in the case of a contravention of Article 16 or 17 of the Market Abuse Regulation, €2,500,000 or 2 per cent of the total annual turnover of the legal person according to the last available accounts approved by the management body, or
    - (iii) in the case of a contravention of Article 18, 19 or 20 of the Market Abuse Regulation, €1,000,000.
- (2) For the purposes of paragraph (1)(l)(i) and (ii), where a body corporate that is a parent undertaking or a subsidiary undertaking which is required to

prepare consolidated financial statements pursuant to Directive 2013/34/EU, the relevant total annual turnover shall be—

- (a) the total annual turnover, or
- (b) the corresponding type of income in accordance with—
  - (i) in the case of a bank, Council Directive 86/635/EEC, and
  - (ii) in the case of an insurance company, Council Directive 91/674/EEC,

according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

- (3) In this Regulation—
  - (i) “Directive 2013/34/EU” means Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC<sup>5</sup>,
  - (ii) “Directive 86/635/EEC” means Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions<sup>6</sup>, and
  - (iii) “Directive 91/674/EEC” means Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings<sup>7</sup>.

*Exercise of supervisory powers and imposition of sanctions*

42. The assessor, when determining the appropriate sanction or sanctions under Regulation 35(8)(c), shall take into account all relevant circumstances including, where appropriate:

- (a) the gravity and duration of the prescribed contravention;
- (b) the degree of responsibility of the assessee for the prescribed contravention;
- (c) the financial strength of the assessee, as indicated, for example, by total turnover where the assessee is a body corporate or unincorporated body, or by annual income where the assessee is a natural person;
- (d) the importance of the profits gained or losses avoided by the assessee, insofar as they can be determined;

<sup>5</sup>OJ 182, 29.6.2013, p. 19.

<sup>6</sup>OJ 372, 31.12.1986, p. 1.

<sup>7</sup>OJ 374, 31.12.1991, p. 7.



- (e) the level of cooperation of the assessee with the Bank and assessor, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by the assessee;
- (f) previous prescribed contraventions by the assessee;
- (g) measures taken by the assessee to prevent repetition of any prescribed contravention.

*Power to correct assessments*

43. (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 35(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*

44. (1) Where—

- (a) no appeal under Regulation 40 against the adverse assessment (including the specified sanctions) is lodged with the Court within the period for lodging the appeal, or
- (b) an appeal under Regulation 40 against the adverse assessment (including the specified sanctions) has been lodged with the Court within the period for lodging the appeal but is withdrawn or abandoned,

then the specified sanctions pursuant to Regulation 41(1)(a) to (l), as confirmed or varied in the order, if any, obtained under Regulation 45(2)(a), shall take effect on the date of that order or such other date as the Court may specify in that order.

(2) Where an appeal under Regulation 40 against the adverse assessment is lodged with the Court within the period for lodging the appeal, then the specified sanctions pursuant to Regulation 41(1)(a) to (l), as confirmed or varied in the order, if any, obtained under Regulation 40(4)(a), shall take effect on the date of that order or such other date as the Court may specify in that order.

*Enforcement of adverse assessment (including specified sanctions)*

45. (1) Where—

- (a) no appeal under Regulation 40 against the adverse assessment is lodged with the Court within the period for lodging the appeal, or
- (b) an appeal under Regulation 40 against the adverse assessment has been lodged with the Court within the period for lodging the appeal but 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) 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 has been served on the assessee.

(4) If the Court is satisfied that it is desirable that the whole or part of proceedings relating to an application under paragraph (1) be heard otherwise than in public because of the nature or the circumstances of the case or having regard to the interests of justice then the Court may make an order that the proceedings shall, in whole or part, 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 Court of Appeal to review the determination on a question of law.

(7) For the avoidance of doubt, it is declared that no variation of an adverse assessment under paragraph (2)(a) may provide for the imposition of a sanction on the assessee that is not a sanction referred to in Regulation 41(1)(a) to (l).

*Publication of decisions to impose specified sanctions*

46. (1) Subject to paragraph (3), immediately after an assessee has been informed of a decision to impose on the assessee specified sanctions under Regulation 41(1)(a) to (l), the Bank shall publish the decision on its website and the publication shall include—

- (a) information relating to the type and nature of the prescribed contravention, and
- (b) the identity of the assessee.

(2) Where the Bank considers that the disclosure of the identity of an assessee in accordance with paragraph (1)(a), or the personal data of an assessee where it is a natural person, would be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data, or would jeopardise an ongoing investigation or the stability of the financial markets, it shall either—

- (a) defer publication of the specified sanction or the identity of the assessee until the reasons for that deferral cease to exist,
- (b) publish the decision on an anonymous basis, provided such publication ensures the effective protection of the personal data concerned, or
- (c) not publish the decision where the Bank is of the opinion that publication in accordance with subparagraph (a) or (b) would be insufficient to ensure—
  - (i) that the stability of financial markets is not jeopardised, or
  - (ii) the proportionality of the publication of the decision where the sanctions concerned are deemed to be of a minor nature.

(3) Where the Bank decides to publish a decision on an anonymous basis in accordance with paragraph (2)(b), it may postpone the publication of the relevant data for a reasonable period of time where it is foreseeable that the reasons for anonymous publication will cease to exist during that period.

(4) Where an adverse assessment is confirmed, varied or set aside by an order of the Court under Regulation 40(4)(a) or 45(2)(a), or the case is remitted to be decided by the Bank under Regulation 40(4)(b) or 45(2)(b), the Bank shall publish on its website information relating to such orders and any subsequent decision of the Bank relating to the case.

(5) The Bank shall ensure that a decision published in accordance with paragraph (1) shall remain accessible on its website for a period of not less than 5 years after its publication, provided that any personal data contained in such publication shall be kept on the website for such period as is necessary in accordance with the Data Protection Acts 1998 and 2003.

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

47. (1) Where—

- (a) a sanction referred to in Regulation 41(1)(j), (k) or (l) has been or is to be imposed on an assessee by virtue of an order obtained under Regulation 40(4)(a) or 45(2)(a), and

- (b) the acts that constitute the prescribed contravention to which the sanction relates also constitute an offence under a law of the State,

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

(2) A sanction referred to in Regulation 41(1)(j), (k) or (l) in respect of a prescribed contravention shall not be imposed on an assessee where—

- (a) the assessee has been found guilty or not guilty of having committed—
  - (i) an offence under a provision of these Regulations, or
  - (ii) an offence referred to in section 1368 of the Companies Act 2014, and
- (b) all or some of the acts constituting that offence also constitute the prescribed contravention.

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

48. A regulated financial service provider shall ensure that a person shall not be concerned in the management of, or have a qualifying holding in, the financial service provider while the person is subject to a sanction referred to in Regulation 41(1)(f), (g) or (h) that is in force.

*Power of the Bank to resolve certain contraventions etc.*

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

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

- (a) is binding on the Bank 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.

*False etc. information*

50. A person who—

- (a) gives the Bank a notification pursuant to a requirement under the Market Abuse Regulation, or
- (b) gives the assessor information pursuant to a requirement under Part 5, that the person knows is false or misleading in a material particular, or that the person does not believe to be true,

shall be guilty of an offence and liable upon summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or both.

## PART 6

### FINAL PROVISIONS

#### *Amendment of Central Bank Act 1942*

51. The Central Bank Act 1942 (No. 22 of 1942) is amended as follows:

(a) in section 2(2A) by the substitution of the following paragraphs for paragraphs (w) and (x) (inserted by Regulation 7 of the European Union (Requirements for Credit Transfers and Direct Debits in Euro) (Amendment) Regulations 2016 (S.I. No. 204 of 2016)):

“(w) the SRM Regulation;

(x) Regulation (EU) No. 260/2012 of the European Parliament and of the Council of 14 March 2012<sup>8</sup>;

(y) Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC<sup>9</sup>;

(z) Commission Delegated Regulation (EU) 2016/522 of 17 December 2015<sup>10</sup>;

(aa) Commission Delegated Regulation (EU) 2016/908 of 26 February 2016<sup>11</sup>;

(ab) Commission Delegated Regulation (EU) 2016/909 of 1 March 2016<sup>12</sup>;

(ac) Commission Delegated Regulation (EU) 2016/957 of 9 March 2016<sup>13</sup>;

(ad) Commission Delegated Regulation (EU) 2016/958 of 9 March 2016<sup>14</sup>;

(ae) Commission Delegated Regulation (EU) 2016/523 of 10 March 2016<sup>15</sup>;

<sup>8</sup>OJ L 94, 30.03.2012, p.22.

<sup>9</sup>OJ L 173, 12.6.2014, p. 1.

<sup>10</sup>OJ L 88, 5.4.2016, p.1.

<sup>11</sup>OJ L 153, 10.6.2016, p. 3.

<sup>12</sup>OJ L 153, 10.6.2016, p. 13.

<sup>13</sup>OJ L 160, 17.6.2016, p. 1.

<sup>14</sup>OJ L 160, 17.6.2016, p. 15.

<sup>15</sup>OJ L 88, 5.4.2016, p. 19.

- (af) Commission Delegated Regulation (EU) 2016/347 of 10 March 2016<sup>16</sup>;
- (ag) Commission Delegated Regulation (EU) 2016/378 of 11 March 2016<sup>17</sup>;
- (ah) Commission Delegated Regulation (EU) 2016/959 of 17 May 2016<sup>18</sup>;
- (ai) Commission Delegated Regulation (EU) 2016/960 of 17 May 2016<sup>19</sup>;
- (aj) Commission Delegated Regulation (EU) 2016/1052 of 8 March 2016<sup>20</sup>;
- (ak) Commission Implementing Regulation (EU) 2016/1055 of 29 June 2016<sup>21</sup>;

(b) in section 33AK(5)—

- (i) in paragraph (ax) by the substitution of “actuaries, or” for “actuaries.”;
- (ii) in subparagraph (ay)(vi) by the substitution of “other Member States, or” for “other Member States.”; and
- (iii) by the insertion of the following paragraph:

“(az) to the Workplace Relations Commission in accordance with Part 3 of the European Communities (Market Abuse) Regulations 2016 (S.I. No.349 of 2016).”;

(c) in section 33AK(10) by the substitution of the following paragraph for paragraphs (f) and (g) in the definition of “supervisory EU legal acts”:

“(f) Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC,

(g) Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive) and Commission Implementing Directive (EU) 2015/2392 of 17 December 2015 on

<sup>16</sup>OJ L 65, 11.3.2016, p. 49.

<sup>17</sup>OJ L 72, 17.3.2016, p. 1.

<sup>18</sup>OJ L 160, 17.6.2016, p. 23.

<sup>19</sup>OJ L 160, 17.6.2016, p. 29.

<sup>20</sup>OJ L 173, 30.6.2016, p. 34.

<sup>21</sup>OJ L 173, 30.6.2016, p. 47.

Regulation (EU) No 596/2014 of the European Parliament and of the Council as regards reporting to competent authorities of actual or potential infringements of that Regulation.”;

(d) in section 33AN—

(i) by the substitution of the following for “or Title II of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012<sup>16</sup>” in the definition of “designated enactment”

“, Title II of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012<sup>16</sup> or Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014;”, and

(ii) by the substitution of the following for “Market Abuse (Directive 2003/6/EC) Regulations 2005 (S.I. No. 342 of 2005)” in the definition of “designated statutory instrument”:

“European Union (Market Abuse) Regulations 2016 (S.I. No. 349 of 2016)”;

(e) in Part 2 of Schedule 2 by the substitution of the following for item 41:

“

41	S.I. No. 349 of 2016	European Union (Market Abuse) Regulations 2016	The whole instrument
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.”.

*Amendment of Communications (Retention of Data) Act 2011*

52. The Communications (Retention of Data) Act 2011 is amended by the insertion of the following in Schedule 1:

“6. An offence under Regulation 5 or 7 of the European Union (Market Abuse) Regulations 2016.”.

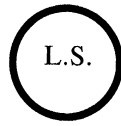
*Amendment of European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006*

53. The European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006 (S.I. No. 255 of 2006) are amended by the substitution of the following for subparagraph (a) of Regulation 9(4):

“(a) Regulation (EU) 596/2014 of the European Parliament and of the Council of 16 April 2014,”

*Repeal and revocation*

54. The Market Abuse (Directive 2003/6/EC) Regulations 2005 (S.I. No. 342 of 2005) are revoked.



GIVEN under my Official Seal,  
30 June 2016.

MICHAEL NOONAN,  
Minister for Finance.



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DUBLIN  
PUBLISHED BY THE STATIONERY OFFICE  
To be purchased from  
GOVERNMENT PUBLICATIONS,  
52 ST. STEPHEN'S GREEN, DUBLIN 2.  
(Tel: 01 - 6476834 or 1890 213434; Fax: 01 - 6476843)  
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€8.89



Wt. (B32194). 285. 7/16. Essentra. Gr 30-15.