

Statutory Instrument

S.I. No. 342 of 2005

Market Abuse (Directive 2003/6/EC) Regulations 2005

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Market Abuse (Directive 2003/6/EC) Regulations 2005

Table of Contents

PART 1

PRELIMINARY

REGULATION	PAGE
1. Citation, construction and commencement.....	6
2. Interpretation generally.....	7
3. Single administrative competent authority.....	17
4. Application.....	18

PART 2

INSIDER DEALING AND MARKET MANIPULATION

REGULATION	PAGE
5. Insider dealing	20
6. Market manipulation.....	23
7. Preventing and detecting market manipulation practices.....	23
8. Exemption for actions taken in conformity with takeover rules.....	24
9. Buy-back programmes or stabilisation measures.....	25
10. Disclosure of inside information.....	28
11. Disclosure of information (additional requirements).....	32
12. Managers' transactions.....	34
13. Suspicious transactions to be notified.....	38
14. Restrictions on disclosure of notification under <i>Regulation 13</i> and of identity of notifier.....	41

15.	Cooperation with other competent authorities.....	42
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PART 3

FAIR PRESENTATION OF RECOMMENDATIONS

REGULATION	PAGE	
16.	Interpretation (<i>Part 3</i>).....	48
17.	Production and dissemination of recommendations.....	50
18.	Identity of producer of recommendation.....	50
19.	General standard for fair presentation of recommendations.....	51
20.	Additional obligations in relation to fair presentation of recommendations....	52
21.	General standard of disclosure of interests and conflicts of interest.....	54
22.	Additional obligations in relation to disclosure of interests or conflicts of interest.....	55
23.	Dissemination of recommendations produced by third parties.....	58
24.	Additional obligations for investment firms and credit institutions.....	60
25.	Non-written recommendations.....	61
26.	Exemption for journalists.....	61

PART 4

POWERS OF THE BANK

REGULATION	PAGE	
27.	Definitions (<i>Part 4</i>).....	63
28.	Power to appoint authorised officers.....	64
29.	Powers of authorised officers.....	65
30.	Warrants.....	68

31.	Directions by Bank.....	69
32.	Privilege.....	74
33.	Delegations, etc.....	74

PART 5

ENFORCEMENT PROVISIONS

REGULATION	PAGE	
34.	Interpretation (<i>Part 5</i>).....	76
35.	Bank may appoint assessor.....	78
36.	Revocation of appointment of assessor.....	81
37.	Power to require witnesses to appear and give evidence.....	82
38.	Referral to Court on question of law.....	84
39.	Assessee to be issued copy of any adverse assessment, etc.....	84
40.	Right of appeal against adverse assessment (including specified sanctions).	85
41.	Sanctions that may be imposed by Bank.....	86
42.	Power to correct assessments.....	87
43.	When specified sanctions take effect.....	88
44.	Enforcement of adverse assessment (including specified sanctions).....	89
45.	Publication of certain specified sanctions.....	91
46.	Person not liable to be penalised twice for same contravention.....	91
47.	Person not to be concerned in management of regulated financial service provider while disqualified.....	92
48.	Power of Bank to resolve suspected contraventions, etc.....	93

PART 6

OFFENCES AND REPORTS

REGULATION	PAGE
49. Offences generally and application of <i>section 32</i> of Investment Funds, Companies and Miscellaneous Provisions Act 2005.....	94
50. Obstruction, etc. of authorised officer.....	95
51. False, etc. information.....	95
52. Offences by bodies corporate, etc.....	96
53. Summary proceedings may be brought by Bank.....	96
54. Annual report of Bank.....	97

SCHEDULE 1

Provisions applicable to the definition of “accepted market practices”

SCHEDULE 2

Provisions applicable to *paragraph (a)* of the definition of “market manipulation”

SCHEDULE 3

Provisions applicable to *paragraph (b)* of the definition of “market manipulation”

SCHEDULE 4

Provisions applicable to lists drawn up under *Regulation 11*

SCHEDULE 5

Text of the Market Abuse Regulation

I, Micheál Martin, Minister for Enterprise, Trade and Employment, in exercise of the powers conferred on me by *section 30* of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 (No. 12 of 2005) and for the purpose of giving effect to the 2003 Market Abuse Directive (being Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003¹ on insider dealing and market manipulation (market abuse)) and for the other purposes mentioned in that section, hereby make the following regulations:

PART 1

PRELIMINARY

Citation, construction and commencement

1. (1) These Regulations may be cited as the Market Abuse (Directive 2003/6/EC) Regulations 2005.

(2) These Regulations and the Companies Acts 1963 to 2005 shall be construed together as one.

(3) Subject to *paragraph (4)*, these Regulations shall come into operation on 6 July 2005.

(4) *Regulations 11 and 12 and Part 3* shall come into operation on 1 October 2005.

¹ OJ L096, 12.04.2003, p.16

Interpretation generally

2. (1) In these Regulations, unless the context otherwise requires -

“accepted market practices” means practices that are -

- (a) reasonably expected in one or more financial markets, and
- (b) accepted by the Bank in accordance with *Schedule 1*;

“act” includes an omission (and, accordingly, any reference to an act done includes an omission made);

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

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

“contravention” includes, in relation to any provision, a failure to comply with that provision and “contravene” shall be construed accordingly;

“Court” means the High Court;

“credit institution” means any person as defined in Article 1(1) of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000² relating to the taking up and pursuit of the business of credit institutions;

² OJ L126, 26.05.2000, p.1

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as amended for the time being;

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

“enactment” includes an instrument made under an enactment;

“financial instrument” means -

- (a) transferable securities as defined in Article 4 of Council Directive 93/22/EEC of 10 May 1993³ on investment services in the securities field,
- (b) units in collective investment undertakings,
- (c) money-market instruments,
- (d) financial futures contracts, including equivalent cash-settled instruments,

³ OJ L141, 11.06.1993, p.27

- (e) forward interest rate agreements,

- (f) interest-rate, currency and equity swaps,

- (g) derivatives on commodities,

- (h) any other instrument admitted to trading on a regulated market in a Member State or for which a request for admission to trading on such a market has been made, and

- (i) options to acquire or dispose of any instrument falling into any of *paragraphs (a) to (h)* of this definition, including equivalent cash-settled instruments in particular options on currency and on interest rates;

“functions” includes powers and duties, and references to the performance of functions include, as respects powers and duties, references to the exercise of powers and the carrying out of duties;

“information of a precise nature” means information that -

- (a) indicates -

- (i) a set of circumstances which exists or may reasonably be expected to come into existence, or
 - (ii) an event which has occurred or may reasonably be expected to occur, and
- (b) is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event, as the case may be, on the prices of financial instruments or related derivative financial instruments;

“information which, if it were made public, would be likely to have a significant effect on the prices of financial instruments or related derivative financial instruments” means information that a reasonable investor would be likely to use as part of the basis of the investor’s investment decisions, and includes cognate expressions;

“inside information” means -

- (a) information of a precise nature relating directly or indirectly to one or more issuers of financial instruments or to one or more financial instruments which has not been made public and which, if it were made public, would be likely to have a significant effect on the price of those financial instruments or on the price of related derivative financial instruments,

- (b) in relation to derivatives on commodities and subject to *paragraph (2)*, information of a precise nature which has not been made public, and relating, directly or indirectly, to one or more such derivatives and which users of markets on which such derivatives are traded would expect to receive in accordance with accepted market practices on those markets, or

- (c) for persons charged with the execution of orders concerning financial instruments, information conveyed by a client and relating to the client's pending orders, which is of a precise nature, which relates directly or indirectly to one or more issuers of financial instruments or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments;

“insider dealing” means any act which contravenes *Regulation 5(1) or (2)*;

“investment firm” means investment firm as defined in Article 1(2) of Council Directive 93/22/EEC;

“issuer” means an issuer of any financial instrument to which these Regulations apply pursuant to *Regulation 4*;

“market abuse” means -

- (a) insider dealing, or
- (b) market manipulation;

“market manipulation” means -

- (a) transactions or orders to trade -
 - (i) which give, or are likely to give, false or misleading signals as to the supply of, demand for or price of financial instruments, or
 - (ii) which secure, by a person, or persons acting in collaboration, the price of one or several financial instruments at an abnormal or artificial level,

unless the person who entered into the transactions or issued the orders to trade establishes that the person’s reasons for so doing are legitimate and the transactions or orders to trade, as the case may be, conform to accepted market practices on the regulated market concerned,

- (b) transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance, or

- (c) dissemination of information through the media, including the Internet, or by any other means, which gives, or is likely to give, false or misleading signals as to financial instruments, including the dissemination of rumours and false or misleading news, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading;

“market operator” -

- (a) means a person who -
 - (i) manages the business of a regulated market,
 - (ii) operates the business of a regulated market, or
 - (iii) manages and operates the business of a regulated market,
- (b) includes a regulated market which -
 - (i) manages its own business as a regulated market,
 - (ii) operates its own business as a regulated market, or

(iii) manages and operates its own business as a regulated market;

“Member State” means a Member State of the European Communities and an EEA State;

“notify” means notify in writing;

“regulated market” means regulated market as defined in Article 1(13) of Council Directive 93/22/EEC;

“relevant community acts” means -

- (a) the 2003 Market Abuse Directive,
- (b) the supplemental Directives, and
- (c) the Market Abuse Regulation.

(2) For the purposes of *paragraph (b)* of the definition of “inside information”, users of markets on which derivatives on commodities are traded shall be deemed to expect to receive information -

- (a) relating, directly or indirectly, to one or more such derivatives, and
- (b) which is -

- (i) routinely made available to the users of those markets, or
- (ii) required to be disclosed in accordance with legal or regulatory provisions, market rules, contracts or customs on the relevant underlying commodity market or commodity derivatives market.

(3) For the purposes of demonstrating the operation of the definition of “market manipulation”, the following examples are derived from that definition -

- (a) conduct by a person, or persons acting in collaboration, to secure a dominant position over the supply of or demand for a financial instrument which has the effect of fixing, directly or indirectly, purchase or sale prices or creating other unfair trading conditions,
- (b) the buying or selling of financial instruments at the close of the market with the effect of misleading investors acting on the basis of closing prices,
- (c) taking advantage of occasional or regular access to the traditional or electronic media by voicing an opinion about a financial instrument (or indirectly about its issuer) while having previously taken positions on that instrument and profiting subsequently from the impact of opinions voiced on the price of that instrument, without having simultaneously

disclosed that conflict of interest to the public in a proper and effective way.

(4) Without prejudice to the examples set out in *paragraph (3)* and for the purposes of applying *paragraph (a)* of the definition of “market manipulation”, the non-exhaustive signals set out in *Schedule 2*, which should not necessarily be deemed in themselves to constitute market manipulation, shall be taken into account when transactions or orders to trade are examined by market participants and competent authorities.

(5) Without prejudice to the examples set out in *paragraph (3)* and for the purposes of applying *paragraph (b)* of the definition of “market manipulation”, the non-exhaustive signals set out in *Schedule 3*, which should not necessarily be deemed in themselves to constitute market manipulation, shall be taken into account when transactions or orders to trade are examined by market participants and competent authorities.

(6) A word or expression that is used in these Regulations and is also used in the relevant community acts shall have in these Regulations the same meaning as it has in the relevant community acts unless the contrary intention appears.

(7) A reference in these Regulations -

(a) to any other enactment or to a Directive or Regulation of the Council or Commission of the European Communities shall, unless the context otherwise requires, be construed as a reference to that enactment, Directive or Regulation as amended or extended by any other

enactment or, as the case may be, Directive or Regulation of the Council or Commission of the European Communities European Communities (including, in the case of an enactment, by a Regulation of these Regulations),

- (b) a reference to a Regulation or Part is a reference to a Regulation or Part of these Regulations unless it is indicated that a reference to some other provision is intended,
- (c) a reference to a Schedule is a reference to a Schedule to these Regulations unless it is indicated that a reference to some other provision is intended,
- (d) a reference to a paragraph, subparagraph or clause is a reference to a paragraph, subparagraph or clause of the provision in which the reference occurs unless it is indicated that a reference to some other provision is intended.

Single administrative competent authority

3. The Bank is designated as the single administrative competent authority for the purposes of the Directive.

Application

4. (1) Subject to *Regulations 5(4), 10(12) and 11(6)*, these Regulations shall apply to any financial instrument -

(a) admitted to trading on a regulated market in at least one Member State,
or

(b) for which a request for admission to trading on a regulated market in at least one Member State has been made,

whether or not any transaction in or relating to the financial instrument takes place on that market.

(2) These Regulations shall apply to -

(a) actions carried out in the State or abroad concerning financial instruments that -

(i) are admitted to trading on a regulated market situated in or operating in the State, or

(ii) for which a request for admission to trading on a regulated market situated in or operating in the State has been made, and

(b) actions carried out in the State concerning financial instruments that -

- (i) are admitted to trading on a regulated market in a Member State, or
- (ii) for which a request for admission to trading on a regulated market in a Member State has been made.

(3) These Regulations do not apply to transactions carried out in pursuit of monetary, exchange rate or public debt management policy by -

- (a) a Member State,
- (b) the European System of Central Banks,
- (c) the Bank,
- (d) the Minister for Finance, or
- (e) the National Treasury Management Agency.

PART 2

INSIDER DEALING AND MARKET MANIPULATION

Insider dealing

5. (1) Subject to *paragraphs (4) and (5) and Regulations 8(2) and (4) and 9(1)*, a person to whom this paragraph applies who possesses inside information shall not use that information by acquiring or disposing of, or by trying to acquire or dispose 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.

(2) A person to whom *paragraph (1)* applies shall not -

- (a) disclose inside information to any other person unless such disclosure is made in the normal course of the exercise of the first-mentioned person's employment, profession or duties, or
- (b) recommend or induce another person, on the basis of inside information, to acquire or dispose of financial instruments to which that information relates.

(3) *Paragraph (1)* shall apply to -

- (a) any person who possesses the inside information concerned -

- (i) by virtue of the person's membership of the administrative, management or supervisory bodies of the issuer of the financial instrument,
 - (ii) by virtue of the person's holding in the capital of the issuer,
 - (iii) by virtue of having access to the information through the exercise of the person's employment, profession or duties, or
 - (iv) by virtue of the person's criminal activities,
- (b) if any person falling within *subparagraph (a)* is a legal person, and without prejudice to the generality of *Regulation 52*, any natural person who takes part in the decision to carry out, for the account of the legal person, any transaction in financial instruments, or
- (c) subject to *regulation 8(3)*, any other person who possesses the inside information concerned while the person knows, or ought to have known, that it is inside information.

(4) This Regulation shall also apply to a financial instrument which does not fall within *Regulation 4(1)* but the value of which depends on a financial instrument which falls within *Regulation 4(1)*.

(5) *Paragraph (1)* does not apply to any transaction conducted in the discharge of an obligation -

- (a) to acquire or dispose of any financial instrument,
- (b) that has become due, and
- (c) that results from an agreement concluded before the person concerned possessed the inside information concerned.

(6) Having regard to section 33(1) of the Investment Funds, Companies and Miscellaneous Provisions Act 2005, it is declared that -

- (a) the purpose of *paragraphs (1), (3)(a) and (b) and (5)* is to implement Article 2 of the 2003 Market Abuse Directive,
- (b) the purpose of *paragraph (3)(c)* is to implement Article 4 of the 2003 Market Abuse Directive, and
- (c) the purpose of *paragraph (2)* is to implement Article 3 of the 2003 Market Abuse Directive.

Market manipulation

6. (1) A person shall not engage in market manipulation.

(2) Having regard to section 33(2) of the Investment Funds, Companies and Miscellaneous Provisions Act 2005, it is declared that the purpose of *paragraph (1)* is to implement Article 5 of the 2003 Market Abuse Directive.

Preventing and detecting market manipulation practices

7. (1) The Bank shall require that market operators -

(a) so structure their operations such that market manipulation practices are prevented and detected, and

(b) report to it on a regular basis in accordance with arrangements drawn up by the Bank.

(2) Without prejudice to the generality of *paragraph (1)*, the Bank may impose requirements under that paragraph concerning transparency of transactions concluded, total disclosure of price-regularisation agreements, a fair system of order pairing, introduction of an effective atypical order detection scheme, sufficiently robust financial instrument reference price-fixing schemes and clarity of rules on the suspension of transactions.

Exemption for actions taken in conformity with takeover rules

8. (1) A word or expression that is used in this Regulation and is also used in the Irish Takeover Panel Act 1997 (No. 5 of 1997) shall have the same meaning in this Regulation as it has in that Act.

(2) Having access to inside information relating to another company and using it in the context of a public takeover offer for the purpose of gaining control of that company or proposing a merger with that company in conformity with rules made under section 8 of the Irish Takeover Panel Act 1997 does not of itself constitute market abuse and is not a contravention of *Regulation 5* or *6*.

(3) *Regulation 5(3)(c)* does not preclude a company (“first-mentioned company”) from dealing in the financial instruments of another company (“second-mentioned company”) at any time by reason only of information in the possession of an officer of the first-mentioned company that -

(a) was received by the officer in the course of the carrying out of the officer’s duties, and

(b) consists only of the fact that the first-mentioned company proposes to acquire or attempt to acquire financial instruments of the second-mentioned company.

(4) Actions taken in compliance with rules made under section 8 of the Irish Takeover Panel Act 1997 (in particular rules relating to the timing, dissemination or

availability, content and standard of care applicable to a disclosure, announcement, communication or release of information during the course of a public takeover offer) does not of itself constitute market abuse and is not a contravention of *Regulation 5* or *6* provided that the relevant general principles set out in the Irish Takeover Panel Act 1997 are also complied with.

(5) Nothing in these Regulations affects the jurisdiction and role of the Irish Takeover Panel under the Irish Takeover Panel Act 1997.

(6) Without prejudice to the generality of *paragraph (5)*, the Irish Takeover Panel, in performing its functions under the Irish Takeover Panel Act 1997, and the Bank, in performing its functions under these Regulations, shall have due regard to the other's performance of functions under that Act or these Regulations, as the case may be.

Buy-back programmes or stabilisation measures

9. (1) *Regulations 5* and *6* do not apply -

- (a) to trading in own shares in buy-back programmes, or to trading to secure the stabilisation of a financial instrument, provided that such trading is carried out in accordance with the Market Abuse Regulation (the text of which is set out, for convenience of reference, in *Schedule 5*), or

- (b) to the purchase of own shares carried out in accordance with Part XI of the Companies Act 1990 (No. 33 of 1990).

(2) Subject to *paragraph (4)*, the acquisition or disposal of interests in relevant share capital by a person during the stabilising period concerned, which -

- (a) is done for the purpose of stabilising or maintaining the market price of securities, and
- (b) is done in conformity with the Market Abuse Regulation,

shall be disregarded during the stabilising period for the purposes of sections 67 to 79 of the Companies Act 1990.

(3) Any interest in relevant share capital which -

- (a) was acquired by a person during the stabilising period for the purpose of stabilising or maintaining the market price of securities,
- (b) was so acquired in accordance with the Market Abuse Regulation, and
- (c) continues to be held by such person at the end of the stabilising period as provided in the Market Abuse Regulation,

shall be treated, for the purposes of sections 67 to 79 of the Companies Act 1990, as having been acquired by the person on the first day following the end of the stabilising period that is not a Saturday, Sunday or public holiday.

(4) Section 91(4) of the Companies Act 1990 shall operate to determine the interests which are to be notified to the Irish Stock Exchange Limited, and the manner in which they are to be so notified, under section 91(2) of that Act.

(5) For the purposes of this Regulation -

“buy-back programme” means a programme as described in, and operated in accordance with, the Market Abuse Regulation;

“relevant share capital” has the same meaning as it has in section 67(2) of the Companies Act 1990;

“stabilising period” means the limited time period provided in Article 8(2) of the Market Abuse Regulation.

Disclosure of inside information

10. (1) Subject to *paragraph (7)*, the issuer of a financial instrument shall publicly disclose without delay inside information -

(a) which directly concerns the issuer, and

(b) in a manner that enables fast access and complete, correct and timely assessment of the information by the public.

(2) Without prejudice to any measures taken under *paragraph (1)*, the issuer shall, for a period of not less than 6 months, post on the issuer's Internet site or sites any inside information that the issuer is required to publicly disclose.

(3) Subject to *paragraph (7)*, the issuer shall not combine, in a manner likely to be misleading, the provision of inside information to the public with the marketing of the issuer's activities.

(4) The issuer shall be deemed to have complied with *paragraph (1)* where, upon the coming into existence of a set of circumstances or the occurrence of an event, albeit not yet formalised, the issuer has without delay informed the public of those circumstances or that event, as the case may be.

(5) Where there is any significant change concerning already publicly disclosed inside information, the issuer shall publicly and without delay disclose the change -

- (a) immediately after the change occurs, and
- (b) through the same channel as the one used for public disclosure of the original information.

(6) The issuer shall take reasonable care to ensure that the disclosure of inside information to the public is synchronised as closely as possible between all categories of investors in regulated markets in all Member States on which -

- (a) the issuer's financial instruments concerned are admitted to trading, or
- (b) the issuer has requested admission to trading of the financial instruments concerned.

(7) The issuer may delay the public disclosure of inside information to avoid prejudicing the issuer's legitimate interests provided that -

- (a) the failure to disclose the information would not be likely to mislead the public, and
- (b) the issuer is able to ensure the confidentiality of the information.

(8) For the purposes of *paragraph (7)*, "legitimate interests" may include any of the following circumstances -

- (a) negotiations in course, or related elements, where the outcome or normal pattern of those negotiations would be likely to be affected by public disclosure (in particular, in the event that the financial viability of the issuer is in grave and imminent danger, although not within the scope of the applicable insolvency law, public disclosure of information may be delayed for a limited period where such a public disclosure would seriously jeopardise the interest of existing and potential shareholders by undermining the conclusion of specific negotiations designed to ensure the long-term financial recovery of the issuer),

- (b) decisions taken or contracts made by the management body of the issuer which need the approval of another body of the issuer in order to become effective, provided that -
 - (i) the organisation of the issuer requires separation between those bodies, and
 - (ii) a public disclosure of the information before such approval together with the simultaneous announcement that this approval is still pending would jeopardise the correct assessment of the information by the public.

(9) In order to ensure the confidentiality of inside information that is not disclosed to the public under *paragraph (7)*, the issuer shall control access to the information and, in particular -

- (a) take effective measures to deny access to the information to persons other than those who require it for the exercise of their functions within the issuer,
- (b) take the measures necessary to ensure that a person with access to the information acknowledges the legal and regulatory duties entailed and is aware of the sanctions attaching to the misuse or improper circulation of the information, and
- (c) without prejudice to *paragraph (11)*, have in place measures which allow immediate public disclosure in case the issuer was not able to ensure the confidentiality of the information.

(10) Subject to *paragraph (11)*, where the issuer, or a person acting on the issuer's behalf or for the issuer's account, discloses any inside information to any third party in the normal exercise of the issuer's or person's employment, profession or duties, the issuer or person, as the case may be, shall make complete and effective public disclosure of that information, simultaneously in the case of an intentional disclosure and without delay in the case of a non-intentional disclosure.

(11) *Paragraph (10)* does not apply where the third party receiving the inside information is a person under an obligation of confidentiality.

(12) This Regulation does not apply to the issuer of the financial instrument concerned where the issuer neither -

- (a) made a request for the financial instrument to be admitted to trading on a regulated market, nor
- (b) approved the admission of the financial instrument to trading on a regulated market.

Disclosure of information (additional requirements)

11. (1) Each relevant person shall draw up a list -

- (a) of those persons working for the relevant person, under a contract of employment or otherwise, who have access to inside information relating directly or indirectly to the relevant person who is the issuer, and
- (b) containing the information set out in *Schedule 4*.

(2) Each relevant person shall regularly update the list drawn up by the relevant person pursuant to *paragraph (1)*.

(3) The Bank may request from any relevant person any list drawn up by the relevant person pursuant to *paragraph (1)*.

(4) A relevant person shall comply with a request under *paragraph (3)* made to the relevant person.

(5) Subject to *paragraph (6)*, in this Regulation, “relevant person” means -

(a) the issuer,

(b) a person acting on behalf of the issuer, or

(c) a person acting for the account of the issuer.

(6) This Regulation does not apply to the issuer of the financial instrument concerned (or persons acting on behalf of, or for the account of, the issuer) where the issuer neither -

(a) made a request for the financial instrument to be admitted to trading on a regulated market, nor

(b) approved the admission of the financial instrument to trading on a regulated market.

Managers' transactions

12. (1) Subject to *paragraphs (3) and (4)*, persons discharging managerial responsibilities, within an issuer of financial instruments registered in the State, and, where applicable, persons closely associated with them, shall notify to the Bank transactions conducted on their own account relating to shares of the issuer, or to derivatives or other financial instruments linked to them.

(2) Persons discharging managerial responsibilities, within an issuer of financial instruments not registered in the State, and, where applicable, persons closely associated with them, shall notify transactions conducted on their own account relating to shares of the issuer, or to derivatives on other instruments linked to them -

- (a) if the issuer is registered in another Member State, in accordance with the rules of notification relating thereto of that Member State,
- (b) if the issuer is not registered in another Member State, to the competent authority of the Member State to which the issuer is required to file the annual information in relation to shares in accordance with Article 10 of Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003⁴, including the Directive as it stands amended for the time being.

⁴ OJ L345, 31.12.2003, p.64

(3) Notification of transactions required by *paragraph (1)* and, where applicable, *paragraph (2)(b)*, shall be made to the Bank within 5 working days of the day of the transaction.

(4) Subject to *paragraph (5)*, the Bank may provide that, where the total amount of the transactions is less than €5,000 at the end of a calendar year, no notification is required or notification may be delayed until 31 January of the following year.

(5) For the purposes of *paragraph (4)*, the total amount of transactions shall be calculated by adding together -

- (a) the transactions conducted on the own account of a person discharging managerial responsibilities within an issuer, and
- (b) the transactions conducted on the own account of persons closely associated with the person referred to in *subparagraph (a)*.

(6) A notification required by *paragraph (1)* shall contain the following information -

- (a) the name of the person discharging managerial responsibilities within the issuer or, where applicable, the name of a person closely associated with such a person,
- (b) the reason for responsibility to notify,

- (c) the name of the relevant issuer,
- (d) a description of the financial instrument,
- (e) the nature of the transaction (for example, acquisition or disposal),
- (f) the date and place of the transaction, and
- (g) the price and volume of the transaction.

(7) The Bank shall ensure that public access to information concerning the transactions notified to it under this Regulation is readily available, at least on an individual basis, without delay.

(8) For the purposes of this Regulation -

“person closely associated”, in relation to a person discharging managerial responsibilities within an issuer of financial instruments, means -

- (a) the spouse of the person discharging managerial responsibilities,
- (b) dependent children of the person discharging managerial responsibilities,

- (c) other relatives of the person discharging managerial responsibilities, who have shared the same household as that person for at least one year on the date of the transaction concerned,

- (d) any person -
 - (i) the managerial responsibilities of which are discharged by a person -
 - (I) discharging managerial responsibilities within the issuer, or
 - (II) referred to in *paragraph (a), (b) or (c)* of this definition,
 - (ii) that is directly or indirectly controlled by a person referred to in *subparagraph (i) of paragraph (d)* of this definition,
 - (iii) that is set up for the benefit of a person referred to in *subparagraph (i) of paragraph (d)* of this definition, or
 - (iv) the economic interests of which are substantially equivalent to those of a person referred to in *subparagraph (i) of paragraph (d)* of this definition;

“person discharging managerial responsibilities”, in relation to an issuer of financial instruments, means a person who is -

- (a) a member of the administrative, management or supervisory bodies of the issuer, or
- (b) a senior executive -
 - (i) who is not a member of the bodies referred to in *paragraph (a)* of this definition,
 - (ii) having regular access to inside information relating, directly or indirectly, to the issuer, and
 - (iii) having the power to make managerial decisions affecting the future developments and business prospects of the issuer.

Suspicious transactions to be notified

13. (1) Any prescribed person who reasonably suspects that a transaction might constitute market abuse shall notify the Bank without delay (which notification may be a telephone call to a telephone number specified by the Bank provided that a notification in writing to the same effect is made as soon as is practicable after that call).

(2) Any prescribed person shall decide on a case-by-case basis whether there are reasonable grounds for suspecting that a transaction involves market abuse after taking into account the elements constituting market abuse.

(3) The Bank shall, on receipt of a notification under *paragraph (1)*, transmit the notification immediately to the relevant competent authority of each regulated market on which the financial instrument concerned -

- (a) is admitted to trading, or
- (b) is the subject of a request to be admitted to trading of which the Bank is aware.

(4) A prescribed person required under *paragraph (1)* to notify the Bank shall transmit to the Bank the following information -

- (a) a description of the transactions concerned, including the type of order (such as limit order, market order or other characteristics of the order) and the type of trading market (such as block trade),
- (b) the reason or reasons for suspecting that the transactions might constitute market abuse,

- (c) the names, or means of identification, of the persons on behalf of whom the transactions have been carried out, and of other persons involved in the transactions,
- (d) the capacity in which the prescribed person operates (such as for own account or on behalf of third parties), and
- (e) any other information which may be significant in reviewing the transactions.

(5) Where the information specified in *paragraph (4)* is not available at the time of notification -

- (a) the notification shall include at least the reason or reasons why the prescribed person suspects that the transactions might constitute market abuse as specified in *paragraph (4)(b)*, and
- (b) the other information required by *paragraph (4)* shall be provided to the Bank as soon as it becomes available.

(6) A prescribed person shall not be liable for any act done, or purporting to be done, in good faith by the person pursuant to *paragraph (1)*.

(7) An act referred to in *paragraph (6)* does not contravene any restriction on the disclosure of information.

(8) For the purposes of this Regulation, “prescribed person” means any person (including any investment firm, credit institution or market operator) professionally arranging transactions in financial instruments who -

- (a) is registered in the State, or
- (b) consists of a branch operating in the State of any person (including any investment firm, credit institution or market operator) -
 - (i) professionally arranging transactions in financial instruments, and
 - (ii) registered in another Member State.

Restrictions on disclosure of notification under *Regulation 13* and of identity of notifier

14. (1) A person notifying the Bank under *Regulation 13* shall not inform any other person, in particular the persons on behalf of whom the transactions concerned have been carried out or parties related to those persons, of the notification, unless under an obligation to do so under an enactment or rule of law.

(2) Without prejudice to the provisions of *Part 5* or the rules on the transfer of personal data laid down in Directive 95/46/EC of the European Parliament and of the Council

of 24 October 1995⁵ on the protection of individuals with regard to the processing of personal data and on the free movement of such data, the Bank shall not disclose to any person the identity of the person (“notifier”) having notified it under *Regulation 13* of the transactions concerned if the disclosure would, or would be likely to, harm the notifier.

Cooperation with other competent authorities

15. (1) The Bank shall cooperate with and render assistance to competent authorities in other Member States whenever necessary for the purpose of performing the functions of competent authorities under the relevant community acts (in particular, the exchange of information and cooperation in investigation activities).

(2) Subject to *paragraph (3)*, the Bank shall, on receipt of a request for information from a competent authority for the purpose referred to in *paragraph (1)* -

- (a) immediately supply the information to that competent authority,
- (b) if necessary, immediately take the measures necessary to collect the required information, or
- (c) if unable to supply the requested information immediately, notify that competent authority of the reasons.

⁵ OJ L281, 23.11.1995, p.31

- (3) The Bank may refuse to supply information requested by a competent authority for the purpose referred to in *paragraph (1)* where -
- (a) communication may adversely affect the sovereignty, security or public policy of the State,
 - (b) judicial proceedings have already been initiated in the State in respect of the same actions and against the same person before the authorities of the State, or
 - (c) a final judgment of a court of competent jurisdiction has already been delivered in relation to such persons for the same actions in the State.
- (4) The Bank shall -
- (a) notify the competent authority of a refusal under *paragraph (3)*, and
 - (b) if the reason for the refusal falls within *paragraph (3)(b)* or *(c)*, provide as detailed information as is possible on the relevant judicial proceedings or final judgment, as the case may be.
- (5) Without prejudice to the obligations of the Bank with respect to criminal proceedings in the State, the Bank shall use information received from competent authorities of other Member States pursuant to Article 16(1) of the 2003 Market Abuse Directive only -

- (a) for the exercise of its functions under the relevant community acts, and
- (b) in the context of administrative or judicial proceedings specifically related to the exercise of those functions,

unless the Bank seeks and receives the consent of the competent authority that sent the information to use such information for other purposes or to forward the information received to competent authorities of other Member States.

(6) Without prejudice to the obligations of the competent authorities in other Member States with respect to criminal proceedings in such Member States, the Bank shall not give information to competent authorities of other Member States pursuant to Article 16(1) of the 2003 Market Abuse Directive unless such other competent authority of such other Member State agrees to use such information only -

- (a) for the exercise of its functions under the relevant community acts, and
- (b) in the context of administrative or judicial proceedings specifically related to the exercise of those functions,

unless the competent authority receiving information from the Bank seeks and receives the consent of the Bank to use such information for other purposes or to forward the information received to competent authorities of other Member States.

(7) The Bank shall give notice to the competent authority of another Member State, in as specific manner as possible, if it believes that -

- (a) acts contrary to the relevant community acts are being, or have been, carried out within the territory of the Member State, or
- (b) acts are affecting financial instruments traded on a regulated market situated in the Member State.

(8) Upon receipt by the Bank of any notice from a competent authority of another Member State that -

- (a) acts contrary to the relevant community acts are being, or have been, carried out within the territory of the State, or
- (b) acts are affecting financial instruments traded on a regulated market situated in the State,

then, without prejudice to the competence of that notifying competent authority, the Bank shall take appropriate action and inform the notifying competent authority of the outcome and, so far as possible, of significant interim developments.

(9) The Bank shall consult with the appropriate competent authorities on any proposed follow-up with respect to any matter which is or was the subject of any notice given or received by the Bank under *paragraph (7) or (8)*.

(10) The Bank -

(a) may request that an investigation be carried out by a competent authority of another Member State in the territory of the Member State, and

(b) may further request that agents or employees of the Bank may accompany the personnel of the competent authority of the Member State during the course of the investigation.

(11) Subject to *paragraph (13)*, upon receipt of a request from a competent authority of another Member State, the Bank shall conduct an investigation in the State with respect to the subject matter of the request.

(12) Subject to *paragraph (13)*, if requested by a competent authority of another Member State, the Bank may permit personnel of the competent authority to accompany personnel of the Bank during the course of an investigation conducted under *paragraph (11)*.

(13) The Bank may refuse to initiate an investigation upon receipt of a notice under *paragraph (11)*, or refuse to permit the personnel of another competent authority to accompany its personnel pursuant to a request under *paragraph (12)*, where -

(a) the investigation might adversely affect the sovereignty, security or public policy of the State,

- (b) judicial proceedings have already been initiated in respect of the same actions and against the same persons before the authorities of the State,
or
- (c) a final judgment of a court of competent jurisdiction has already been delivered in relation to such persons for the same actions in the State.

(14) The Bank shall -

- (a) notify the competent authority concerned of a refusal under *paragraph (13)*, and
- (b) if the reason for the refusal falls with *paragraph (13)(b)* or *(c)*, provide as detailed information as is possible on the relevant judicial proceedings or final judgment, as the case may be.

PART 3

FAIR PRESENTATION OF RECOMMENDATIONS

Interpretation (*Part 3*)

16. In this Part, unless the context otherwise requires -

“distribution channels” means a channel through which information is, or is likely to become, publicly available;

“issuer” means an issuer of a financial instrument to which -

- (a) these Regulations apply pursuant to *Regulation 4*, and
- (b) a recommendation relates, directly or indirectly,

“likely to become publicly available information” means information to which a large number of persons have access;

“recommendation” means research or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers of financial instruments, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public;

“related company” means a related company within the meaning of section 140 of the Companies Act 1990;

“relevant person” means a person producing or disseminating recommendations in the exercise of the person’s profession or the conduct of the person’s business;

"research or other information recommending or suggesting investment strategy" means -

- (a) information -
 - (i) produced by an independent analyst, an investment firm, a credit institution, any other person whose main business is to produce recommendations or a person working for any of them under a contract of employment or otherwise, and
 - (ii) that, directly or indirectly, expresses a particular investment recommendation in respect of a financial instrument or an issuer of financial instruments, or
- (b) information produced by persons other than the persons referred to in *paragraph (a)(i)* of this definition which directly recommends a particular investment decision in respect of a financial instrument.

Production and dissemination of recommendations

17. A person who produces or disseminates recommendations shall -

- (a) take reasonable care to ensure that the recommendations are fairly presented, and
- (b) disclose any interests in or conflicts of interest concerning the financial instruments and issuer to which the recommendation relates.

Identity of producer of recommendation

18. (1) Without prejudice to the generality of *Regulation 17* but subject to *Regulation 26*, any person who produces a recommendation shall ensure that the recommendation discloses clearly and prominently -

- (a) the name and job title of the individual who prepared the recommendation, and
- (b) the name of the person responsible for its production.

(2) Subject to *Regulation 26*, where the relevant person responsible for the preparation or production of a recommendation is an investment firm or a credit institution, the investment firm or credit institution shall ensure that the recommendation indicates clearly and prominently the identity of the relevant competent authority of the investment firm or credit institution, as the case may be.

(3) Subject to *Regulation 26*, where the relevant person responsible for the preparation or production of a recommendation is neither a credit institution nor an investment firm but is subject to self-regulatory standards or codes of conduct, the relevant person shall ensure that a reference to those standards or codes, as the case may be, is disclosed clearly and prominently in the recommendation.

General standard for fair presentation of recommendations

19. (1) Subject to *Regulation 26*, a relevant person responsible for the preparation or production of recommendations shall take reasonable care to ensure that -

- (a) facts are clearly distinguished from interpretations, estimates, opinions and other types of non-factual information,
- (b) all sources are reliable or, where there is any doubt as to whether a source is reliable, this is clearly indicated, and
- (c) all projections, forecasts and price targets are clearly labelled as such and that the material assumptions made in producing or using them are indicated.

(2) Subject to *Regulation 26*, a relevant person shall take reasonable care to ensure that any recommendation can be justified to the Bank if the Bank requests justification of the recommendation.

Additional obligations in relation to fair presentation of recommendations

20. (1) Without prejudice to the generality of *Regulation 19*, where a relevant person is an independent analyst, an investment firm, a credit institution, any related company, any other relevant person whose main business is to produce recommendations, or a person working for any of them under a contract of employment or otherwise, the relevant person shall take reasonable care to ensure that -

- (a) subject to *paragraph (2)*, all substantially material sources are indicated, including -
 - (i) a description of the relevant issuer,
 - (ii) whether or not the recommendation has been disclosed to that issuer, and
 - (iii) whether or not following such a disclosure the recommendation has been amended before its dissemination,
- (b) subject to *paragraph (2)*, any basis of valuation or other methodology used to evaluate a financial instrument or an issuer of a financial instrument, or to set a price target for a financial instrument, is adequately summarised,

- (c) subject to *paragraph (2)*, the meaning of any recommendation made, such as buy, sell or hold, which may include the time horizon of the investment to which the recommendation relates, is adequately explained and any appropriate risk warning, including a sensitivity analysis of the relevant assumptions, indicated,
- (d) reference is made to the planned frequency, if any, of updates of the recommendation and to any major changes in the coverage policy previously announced,
- (e) the date on which the recommendation was first released for distribution is indicated clearly and prominently, as well as the relevant date and time for any financial instrument price mentioned, and
- (f) where a recommendation differs from a recommendation concerning the same financial instrument or issuer, issued during the 12 months immediately preceding its release, this change and the date of the earlier recommendation are indicated clearly and prominently.

(2) Where the requirements of *paragraph (1)(a), (b) or (c)* would be disproportionate in relation to the length of the recommendation distributed, it is sufficient to make clear and prominent reference in the recommendation to a place where the required information can be directly and easily accessed by the public, such as a direct Internet link to that information on an appropriate Internet site of the relevant person, provided that there has been no change in the methodology or basis of valuation used.

General standard for disclosure of interests and conflicts of interest

21. (1) Subject to *paragraphs (2), (3) and (4)* and *Regulation 26*, a relevant person shall disclose in any recommendation all relationships and circumstances that may reasonably be expected to impair the objectivity of the recommendation, in particular where the relevant person has -

- (a) a significant financial interest in one or more of the financial instruments which are the subject of the recommendation, or
- (b) a significant conflict of interest with respect to an issuer to which the recommendation relates.

(2) Where a relevant person is a legal person, *paragraph (1)* also applies to any person working for, or providing a service to, the relevant person under a contract of employment or otherwise, who was involved in preparing the recommendation.

(3) Where the relevant person is a legal person, the information to be disclosed in accordance with *paragraph (1)* shall include the following -

- (a) any interests or conflicts of interest of the relevant person or of related companies that are accessible or reasonably expected to be accessible to the persons involved in the preparation of the recommendation, and

- (b) any interests or conflicts of interest of the relevant person or of related companies known to persons who, although not involved in the preparation of the recommendation, had or could reasonably be expected to have access to the recommendation prior to its dissemination to customers or the public.

(4) Where a disclosure under this Regulation would be disproportionate in relation to the length of the recommendation distributed, it is sufficient to make clear and prominent reference in the recommendation to a place where the disclosure can be directly and easily accessed by the public, such as a direct Internet link to the disclosure on an appropriate Internet site of the relevant person.

Additional obligations in relation to disclosure of interests or conflicts of interest

22. (1) Without prejudice to the generality of *Regulation 21* but subject to *paragraph (4)*, where a relevant person is an independent analyst, an investment firm, a credit institution, any related company, or any other relevant person whose main business is to produce recommendations, the relevant person shall, in any recommendation produced by the relevant person, disclose clearly and prominently the following information on their interests and conflicts of interest -

- (a) any major shareholdings that exist between the relevant person or any related company on the one hand and the issuer on the other hand,

- (b) any other significant financial interests held by the relevant person or any related company in relation to the issuer,
- (c) where applicable, a statement that the relevant person or any related company is a market maker or liquidity provider in the financial instruments of the issuer,
- (d) where applicable, a statement that the relevant person or any related company has been lead manager or co-lead manager during the previous 12 months of any publicly disclosed offer of financial instruments of the issuer,
- (e) where applicable, a statement that the relevant person or any related company is party to any other agreement with the issuer relating to the provision of investment banking services, provided that this would not entail the disclosure of any confidential commercial information and that the agreement -
 - (i) has been in effect during the previous 12 months, or
 - (ii) has given rise during the same period to a payment of compensation or to a promise to pay compensation, and

- (f) where applicable, a statement that the relevant person or any related company is party to an agreement with the issuer relating to the production of the recommendation.
- (2) For the purposes of *paragraph (1)(a)*, “major shareholdings” include -
- (a) a shareholding held by the relevant person or any related company that exceeds 5 % of the total issued share capital in the issuer, and
 - (b) a shareholding held by the issuer exceeding 5 % of the total issued share capital in the relevant person or any related company.
- (3) Without prejudice to the generality of *Regulation 21* and of *paragraph (1)*, a relevant person which is an investment firm or a credit institution shall disclose clearly and prominently -
- (a) in general terms, the organisational and administrative arrangements set up within the investment firm or the credit institution, as the case may be, for the prevention and avoidance of conflicts of interest with respect to recommendations, including information barriers,
 - (b) with respect to persons working for the investment firm or the credit institution, as the case may be, under a contract of employment or otherwise who are involved in preparing a recommendation, whether or not the remuneration of such persons is tied to investment banking

transactions performed by the investment firm or credit institution, as the case may be, or any related company,

- (c) where persons referred to in *subparagraph (b)* receive or purchase the shares of the issuers prior to a public offering of the shares, the price at which the shares were acquired and the date of acquisition, and
- (d) on a quarterly basis, the proportion of all recommendations that fall within the categories buy, hold, sell or equivalent terms, as well as the proportion of issuers corresponding to each of those categories to which the investment firm or the credit institution, as the case may be, has supplied material investment banking services over the previous 12 months.

(4) Where a disclosure under this Regulation would be disproportionate in relation to the length of the recommendation distributed, it is sufficient to make clear and prominent reference in the recommendation to a place where the disclosure can be directly and easily accessed by the public, such as a direct Internet link to the disclosure on an appropriate Internet site of the relevant person.

Dissemination of recommendations produced by third parties

23. (1) Subject to *paragraph (5)*, a relevant person who disseminates a recommendation produced by a third party shall ensure that the recommendation indicates clearly and prominently the identity of the relevant person.

(2) Subject to *paragraph (5)*, where a recommendation produced by a third party is substantially altered within the disseminated information, the person disseminating the information shall clearly indicate the substantial alteration in detail.

(3) Subject to *paragraph (5)*, where a substantial alteration referred to in *paragraph (2)* consists of a change of the direction of the recommendation (such as changing a buy recommendation into a hold or sell recommendation or vice versa), the person disseminating the substantial alteration shall comply with the requirements of *Regulations 18 to 21* as respects the substantial alteration.

(4) Subject to *paragraph (5)*, a relevant person who disseminates a substantially altered recommendation shall have a formal written policy so that the persons receiving the information may be directed to where they can have access to such of the following that are publicly available -

- (a) the identity of the producer of the recommendation,
- (b) the recommendation, and
- (c) the disclosure of the producer's interests or conflicts of interest.

(5) *Paragraphs (1) to (4)* do not apply to news reporting on recommendations produced by a third party where the substance of the recommendation is not altered.

(6) Where there is dissemination of a summary of a recommendation produced by a third party, the relevant persons disseminating the summary shall ensure that the summary -

(a) is clear and not misleading, and

(b) mentions such of the following that are publicly available -

(i) the source document, and

(ii) where disclosures relating to the source document can be directly and easily accessed by the public.

Additional obligations for investment firms and credit institutions

24. (1) Without prejudice to the generality of *Regulation 23*, where the relevant person -

(a) is an investment firm or credit institution or a person working for the investment firm or credit institution, as the case may be, under a contract of employment or otherwise, and

(b) disseminates recommendations produced by a third party,

then the relevant person shall ensure that the recommendation includes a clear and prominent disclosure of the name of the competent authority of the investment firm or credit institution, as the case may be.

(2) Where the producer of a recommendation referred to in *paragraph (1)* has not already disseminated the recommendation through a distribution channel, the requirements of *Regulation 22* shall be met by the disseminator of the recommendation.

(3) Where an investment firm or credit institution referred to in *paragraph (1)* has substantially altered a recommendation, *Regulations 18 to 22* shall apply with all necessary modifications.

Non-written recommendations

25. The requirements of *Regulations 18, 19, 20, 21(1)* and *22* may be satisfied, in the case of a recommendation which is not in writing, by reference to a place where the information concerned may be directly and easily accessed by the public, such as a direct Internet link to an appropriate Internet site of the relevant person.

Exemption for journalists

26. (1) *Regulations 18, 19* and *21* do not apply to recommendations produced or disseminated by journalists in the State subject to equivalent appropriate regulation.

(2) Without prejudice to *paragraph (1)*, where a journalist acts in a journalist's professional capacity, the dissemination of information will be assessed, for the purposes of the definition of "market manipulation", taking into account the code of conduct governing

the journalist's profession, unless the journalist derives, directly or indirectly, an advantage or profit from the dissemination of the information concerned.

(3) For the purposes of this Regulation, “equivalent appropriate regulation” means such regulation (including self-regulation) as the Bank considers equivalent to the requirements of *Regulations 18, 19 and 21*.

PART 4
POWERS OF THE BANK

Definitions (Part 4)

27. In this Part, unless the context otherwise requires -

“authorised officer” means an authorised officer appointed under *Regulation 28(1)*;

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

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

“responsible authority” means -

- (a) the Chief Executive of the Irish Financial Services Regulatory Authority, or
- (b) any person to whom the Chief Executive of that Authority has delegated responsibility for appointing authorised officers.

Power to appoint authorised officers

28. (1) A responsible authority may, in writing -
- (a) authorise such and so many persons as the authority considers necessary to be authorised officers for the purposes of these Regulations, and
 - (b) revoke any such authorisation.
- (2) An appointment under *paragraph (1)(a)* may be for a specified or unspecified period.
- (3) Every authorised officer shall -
- (a) be furnished with a certificate of his or her appointment as an authorised officer, and
 - (b) when exercising a power under these Regulations of an authorised officer, produce the certificate, together with some form of personal identification, if requested to do so by a person affected by the exercise of that power.
- (4) An appointment under *paragraph (1)* of a person as an authorised officer ceases -

- (a) when the responsible authority concerned revokes the appointment,
- (b) the person dies or resigns from the appointment,
- (c) if the appointment is for a specified period, when the period ends,
- (d) if the person appointed is an officer of the Irish Financial Services Regulatory Authority, when the person ceases to be such an officer, or
- (e) if the person appointed is an officer of an authority or market undertaking to which the Bank has delegated powers and functions under *Regulation 33(1)(c)*, when the person ceases to be such an officer.

Powers of authorised officers

29. (1) An authorised officer may, for the purposes of enforcing compliance with these Regulations (including carrying out investigations in relation thereto), do all or any of the following -

- (a) at all reasonable times enter any premises at which there are reasonable grounds to believe that there are any relevant records,
- (b) search and inspect the premises referred to in *subparagraph (a)* and any relevant records on the premises,

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

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

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

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

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

- (a) a liquidator or receiver of, or any person who is or has been an officer or employee or agent of, a person to whom these Regulations apply, or
- (b) any other person who appears to the Bank or the authorised officer to have the relevant record or report in his or her possession or under his

or her control or the ability to provide information or assistance, as the case may be.

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

Warrants

30. (1) When an authorised officer in the exercise of the authorised officer's powers under *Regulation 29(1)* -

(a) is prevented from entering any premises, or

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

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

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

(a) has been prevented from entering any premises, or

- (b) has reasonable grounds for believing that there are relevant records in a private dwelling,

then the judge may issue a warrant under the judge's hand authorising the authorised officer, accompanied, if the judge considers it appropriate to so provide, by such number of members of the Garda Síochána as may be specified in the warrant, at any time within 4 weeks from the date of issue of the warrant, to enter, if need be by force, the premises or private dwelling and exercise any of the powers referred to in *Regulation 29(1)*.

Directions by Bank

31. (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 Member States,
- (b) enhance investor confidence in those markets, or
- (c) prevent any person from contravening or continuing to contravene a provision of these Regulations or any other 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 these Regulations or any other 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 (2)(b)* or *(c)*, irrespective of whether it is of that opinion) apply to the Court in a summary manner for such order as may be appropriate by way of enforcement of the direction and the Court may, as it thinks fit, on the hearing of the application, make or refuse to make an order providing for such relief.

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

(7) An application under *paragraph (4)* may not be made if the direction concerned has been the subject of an order granted under *paragraph (5)* (but without prejudice to the right of a person, the subject of an order granted under *paragraph (5)*, to apply subsequently to the Court to have the order varied or discharged).

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

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

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

(11) The Bank may give a direction amending or revoking a direction given by it under *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.

(12) On the expiry of the period specified in a direction for which it is to have effect, the Bank may give another direction under *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.

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

Privilege

32. Nothing in these Regulations shall -

- (a) compel the disclosure by a person of any information which the person would, in the opinion of the Court, be entitled to refuse to produce on the grounds of legal professional privilege, or
- (b) authorise the taking possession of any document containing such information which is in such person's possession.

Delegations, etc.

33. (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) subject to *paragraph (5)*, by delegation to other authorities or market undertakings, or

(d) by applying to the Court.

(2) Subject to *paragraph (5)*, the Bank may delegate in writing to an approved stock exchange any one or more of its functions under these Regulations subject to such conditions as are specified in the delegation.

(3) A delegation under this Regulation does 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 the applicable provisions of Irish market abuse law shall be with the Bank.

(5) The Bank shall not delegate any of its functions under *Regulation 7, 15, 28(1), 31, 53 or 54*.

PART 5
ENFORCEMENT PROVISIONS

Interpretation (*Part 5*)

34. (1) In this Part, unless the context otherwise requires -

“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*;

“prescribed contravention” means a contravention of -

- (a) any provision of *Regulation 5* or *6*,
- (b) any provision of *Regulation 10, 11, 12* (except *Regulation 12(7)*), *13* (except *Regulation 13(3)*), *14* (except *Regulation 14(2)*), *17, 18, 19, 20, 21, 22, 23, 24* or *47*, or
- (c) a requirement under any provision of *Regulation 7*;

“qualifying holding” means -

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

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

“sanction” means any sanction referred to in any of *paragraphs (a) to (f) of Regulation 41*;

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

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

Bank may appoint assessor

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 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 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 42(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 do one or more of the following -

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

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

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

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

- (a) fails to comply with a notice under *paragraph (1)*,

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

then -

- (i) the assessor may apply to the Court for an order requiring the person concerned to do one or both of the following -
 - (I) to comply with the notice under *paragraph (1)*,
 - (II) to discontinue or not repeat the behaviour falling within any of the provisions of *subparagraphs (b) to (f)*, or behaviour of any similar kind, and

- (ii) the Court, if satisfied that there is no reasonable excuse for the failure to comply with the notice under *paragraph (1)* or for the behaviour concerned, as the case may be, grant the order and such other orders as it considers appropriate to ensure that the person concerned cooperates with the assessor.

Referral to Court on question of law

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

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

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

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

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

(6) For the avoidance of doubt, it is declared that no variation of an adverse assessment under *paragraph (4)(a)* may provide for the imposition of a sanction on the assessee which is not a sanction referred to in *paragraphs (a) to (f)* of *Regulation 41*.

Sanctions that may be imposed by Bank

41. In the case of an adverse assessment, the Bank may impose on the assessee such of the following sanctions as are the specified sanctions -

- (a) a private caution or reprimand,
- (b) a public caution or reprimand,
- (c) subject to *Regulation 46(2)*, a direction to pay to the Bank a monetary penalty (but not exceeding €2,500,000 in any case),
- (d) a direction disqualifying the assessee from being concerned in the management of, or having a qualifying holding in, any regulated financial service provider for such time as is specified in the order,
- (e) if the assessee is continuing to commit a prescribed contravention, a direction ordering the assessee to cease committing the prescribed contravention,
- (f) a direction to pay to the Bank all or a specified part of the costs incurred by the Bank in investigating the matter to which the assessment relates and in holding the assessment (including any costs incurred by authorised officers).

Power to correct assessments

42. (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

43. (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 which has been lodged with the Court within the period for lodging the appeal is withdrawn or abandoned,

then the specified sanctions, as confirmed or varied in the order, if any, obtained under *Regulation 44(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, as confirmed or varied in the order, if any, obtained under *Regulation 40(4)(a)*, shall take effect of the date of that order or such other date as the Court may specify in that order.

Enforcement of adverse assessment (including specified sanctions)

44. (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 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) 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) An application under *paragraph (1)* 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) 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 which is not a sanction referred to in *paragraphs (a) to (f) of Regulation 41*.

Publication of certain specified sanctions

45. The Bank shall publicly disclose the specified sanctions referred to in *paragraphs (c) to (f) of Regulation 41*, as confirmed or varied in the order concerned obtained under *Regulation 40(4)(a) or 44(2)(a)*, that are imposed on the assessee unless the Bank considers that the disclosure would -

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

Person not liable to be penalised twice for same contravention

46. (1) Where -

- (a) a sanction referred to in *Regulation 41(c)* is to be imposed on the assessee by virtue of an order obtained under *Regulation 40(4)(a) or 44(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.

- (2) A sanction referred to in *Regulation 41(c)* in respect of a prescribed contravention shall not be imposed on the assessee where -
- (a) the assessee has been found guilty or not guilty of having committed an offence under a provision of -
 - (i) these Regulations, or
 - (ii) *Part 4* of the Investment Funds, Companies and Miscellaneous Provisions 2005 Act, 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

47. 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(d)* that is in force.

Power of Bank to resolve suspected contraventions, etc.

48. (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.

PART 6

OFFENCES AND REPORTS

Offences generally and application of *section 32* of Investment Funds, Companies and Miscellaneous Provisions Act 2005

49. (1) A person who contravenes -
- (a) any provision of *Regulation 5* or *6*,
 - (b) any provision of *Regulation 10, 11, 12 (except Regulation 12(7)), 13 (except Regulation 13(3)), 14 (except Regulation 14(2)), 17, 18, 19, 20, 21, 22, 23, 24 or 47*, or
 - (c) a requirement under any provision of *Regulation 7*,

is guilty of an offence and liable on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both.

(2) Each offence under *paragraph (1)* consisting of a contravention of any provision of *Regulation 5* or *6* is an offence to which section 32 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 applies.

(3) Where the contravention in respect of which a person is convicted of an offence under these Regulations is continued after the conviction, the person shall be guilty of a further offence on every day on which the contravention continues and liable on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both for each such further offence.

Obstruction, etc. of authorised officer

50. A person who -

- (a) obstructs an authorised officer (within the meaning of *Regulation 27*) in the exercise of the powers of an authorised officer under *Part 4*,
- (b) without reasonable excuse, fails to comply with a request or requirement made by such an officer under *Part 4*, or
- (c) gives such an officer information that the person knows or ought reasonably to know is false or misleading in a material particular,

is guilty of an offence and liable upon summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both.

False, etc. information

51. A person who -

- (a) gives the Bank a notification under *Regulation 13*, or
- (b) gives the assessor (within the meaning of *Regulation 34*) 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 is guilty of an offence and liable upon summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both.

Offences by bodies corporate, etc.

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

(2) A person may be charged with having committed an offence under these Regulations even if the body corporate concerned is not charged with having committed an offence under these Regulations in relation to the same matter.

Summary proceedings may be brought by Bank

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

Annual report of Bank

54. The Bank shall provide the Minister with a copy extract relating to the performance of its functions under these Regulations of its annual report to the Minister for Finance pursuant to section 330 of the Central Bank Act 1942 (No. 22 of 1942) as inserted by section 26 of the Central Bank and Financial Services Authority of Ireland Act 2003 (No. 12 of 2003).

SCHEDULE 1

Regulation 2(1)

PROVISIONS APPLICABLE TO THE DEFINITION OF “ACCEPTED MARKET PRACTICES”

Factors to be taken into account when considering market practices

1.1 For the purposes of applying the definitions of “inside information” and “market manipulation” in *Regulation 2(1)*, the following non-exhaustive factors shall be taken into account by the Bank, without prejudice to collaboration with other authorities, when assessing whether they can accept a particular market practice -

- (a) the level of transparency of the relevant market practice to the whole market,
- (b) the need to safeguard the operation of market forces and the proper interplay of the forces of supply and demand,
- (c) the degree to which the relevant market practice has an impact on market liquidity and efficiency,
- (d) the degree to which the relevant practice takes into account the trading mechanism of the relevant market and enables market participants to react properly and in a timely manner to the new market situation created by that practice,

- (e) the risk inherent in the relevant practice for the integrity of, directly or indirectly, related markets, whether regulated or not, in the relevant financial instrument within the whole Community,
- (f) the outcome of any investigation of the relevant market practice by any competent authority or other authority mentioned in Article 12(1) of the 2003 Market Abuse Directive, in particular whether the relevant market practice breached rules or regulations designed to prevent market abuse, or codes of conduct, be it on the market in question or on directly or indirectly related markets within the Community, and
- (g) the structural characteristics of the relevant market including whether it is regulated or not, the types of financial instruments traded and the type of market participants, including the extent of retail investors participation in the relevant market.

The Bank shall, when considering the need to safeguard the operation of market forces and the proper interplay of the forces of supply and demand referred to in *subparagraph (b)*, in particular, analyse the impact of the relevant market practice against the main market parameters, such as the specific market conditions, before carrying out the relevant market practice, the weighted average price of a single session or the daily closing price.

- 1.2. The Bank shall not assume that practices, in particular new or emerging market practices, are unacceptable simply because they have not been previously accepted by the Bank.
- 1.3. The Bank shall regularly review the market practices it has accepted, in particular, taking into account significant changes to the relevant market environment, such as changes to trading rules or to market infrastructure.

Consultation procedures and disclosure of decisions

- 2.1. For the purposes of applying the definitions of "inside information" and "market manipulation" in *Regulation 2*, the procedures set out in *subparagraphs 2.2, 2.3 and 2.4* shall be observed by the Bank when considering whether to accept or continue to accept a particular market practice.
- 2.2. The Bank shall, before issuing a decision as to whether to accept or continue to accept the market practice concerned, consult as appropriate relevant bodies such as representatives of issuers, financial services providers, consumers, other authorities and market operators. The consultation procedure shall include consultation with other competent authorities, in particular where there exist comparable markets (that is, in structures, volume, type of transactions).
- 2.3. The Bank shall publicly disclose any decision regarding the acceptability of the market practice concerned, including an appropriate description of such practice. The disclosure shall include a description of the factors taken into account in determining

whether the relevant practice is regarded as acceptable, in particular where different conclusions have been reached regarding the acceptability of the same practice on different Member States' markets.

- 2.4. The Bank shall transmit its decision as soon as possible to the Committee of European Securities Regulators.
- 2.5. When investigatory actions on specific cases have already started, the consultation procedures set out in *subparagraphs 2.2 and 2.3* may be delayed until the end of such investigation and possible related sanctions.
- 2.6. A market practice which was accepted following the consultation procedures set out in *subparagraphs 2.2 and 2.3* shall not be changed without using the same consultation procedures.

SCHEDULE 2

PROVISIONS APPLICABLE TO *PARAGRAPH (a)* OF THE DEFINITION OF “MARKET MANIPULATION”

Manipulative behaviour related to false or misleading signals and to price securing

Without prejudice to the examples of market manipulation set out in *Regulation 2*, and for the purposes of applying *paragraph (a)* of the definition of “market manipulation” in that Regulation, the non-exhaustive signals set out below, which should not necessarily be deemed in themselves to constitute market manipulation, shall be taken into account when transactions or orders to trade are examined by market participants and the Bank:

- (a) the extent to which orders to trade given or transactions undertaken represent a significant proportion of the daily volume of transactions in the relevant financial instrument on the regulated market concerned, in particular when these activities lead to a significant change in the price of the financial instrument,
- (b) the extent to which orders to trade given or transactions undertaken by persons with a significant buying or selling position in a financial instrument lead to significant changes in the price of the financial

instrument or related derivative or underlying asset admitted to trading on a regulated market,

- (c) whether transactions undertaken lead to no change in beneficial ownership of a financial instrument admitted to trading on a regulated market,
- (d) the extent to which orders to trade given or transactions undertaken include position reversals in a short period and represent a significant proportion of the daily volume of transactions in the relevant financial instrument on the regulated market concerned, and might be associated with significant changes in the price of a financial instrument admitted to trading on a regulated market,
- (e) the extent to which orders to trade given or transactions undertaken are concentrated within a short time span in the trading session and lead to a price change which is subsequently reversed,
- (f) the extent to which orders to trade given change the representation of the best bid or offer prices in a financial instrument admitted to trading on a regulated market, or more generally the representation of the order book available to market participants, and are removed before they are executed, and

- (g) the extent to which orders to trade are given or transactions are undertaken at or around a specific time when reference prices, settlement prices and valuations are calculated and lead to price changes which have an effect on such prices and valuations.

SCHEDULE 3

PROVISIONS APPLICABLE TO *PARAGRAPH (b)* OF THE DEFINITION OF “MARKET MANIPULATION”

Manipulative behaviours related to the employment of fictitious devices or any other form of deception or contrivance

Without prejudice to the examples of market manipulation set out in *Regulation 2* and for the purposes of applying *paragraph (b)* of the definition of “market manipulation” in that Regulation, the non-exhaustive signals set out below, which should not necessarily be deemed in themselves to constitute market manipulation, are taken into account when transactions or orders to trade are examined by market participants and the Bank:

- (a) whether orders to trade given or transactions undertaken by persons are preceded or followed by dissemination of false or misleading information by the same persons or persons linked to them, and
- (b) whether orders to trade are given or transactions are undertaken by persons before or after the same persons or persons linked to them produce or disseminate research or investment recommendations which are erroneous or biased or demonstrably influenced by material interest.

SCHEDULE 4

PROVISIONS APPLICABLE TO LISTS DRAWN UP UNDER *REGULATION 11*

Content and form of list of persons privy to inside information

1. For the purposes of *Regulation 11*, lists of insiders include all persons covered by that Regulation who have access to inside information relating, directly or indirectly, to the issuer, whether on a regular or occasional basis.

2. Lists of insiders shall state -
 - (a) the identity of any person having access to inside information,

 - (b) the reason why any such person is on the list, and

 - (c) the date at which the list of insiders was created and updated.

3. Lists of insiders shall be promptly updated -
 - (a) whenever there is a change in the reason why any person is already on the list,

 - (b) whenever any new person has to be added to the list, and

(c) by mentioning whether and when any person already on the list has no longer access to inside information.

4. Lists of insiders shall be kept for at least 5 years after being drawn up or updated.

5. Persons required to draw up lists of insiders shall take the necessary measures to ensure that any person on such a list that has access to inside information acknowledges the legal and regulatory duties entailed and is aware of the sanctions attaching to the misuse or improper circulation of such information.

SCHEDULE 5

TEXT OF THE MARKET ABUSE REGULATION

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 2003/6/EC of the European Parliament and the Council of 28

January 2003 on insider dealing and market manipulation (market abuse)⁶, and in particular Article 8 thereof,

After consulting the Committee of European Securities Regulators (CESR)⁷ for technical advice,

Whereas:

(1) Article 8 of Directive 2003/6/EC provides that the prohibitions provided therein shall not apply to trading in own shares in "buy back" programmes or to the stabilisation of a financial instrument, provided such trading is carried out in accordance with implementing measures adopted to that effect.

(2) Activities of trading in own shares in "buy-back" programmes and of stabilisation of a financial instrument which would not benefit from the exemption of the prohibitions of Directive 2003/6/EC as provided for by Article 8 thereof, should not in themselves be deemed to constitute market abuse.

⁶ OJ L 96, 12.4.2003, p. 16

⁷ CESR was established by Commission Directive 2001/521/EC (OJ L191, 13.7.2001, p. 43)

(3) On the other hand, the exemptions created by this Regulation only cover behaviour directly related to the purpose of the buy-back and stabilisation activities. Behaviour which is not directly related to the purpose of the buy-back and stabilisation activities shall therefore be considered as any other action covered by Directive 2003/6/EC and may be the object of administrative measures or sanctions, if the competent authority establishes that the action in question constitutes market abuse.

(4) As regards trading in own shares in "buy-back" programmes, the rules provided for by this Regulation are without prejudice to the application of Council Directive 77/91/EEC on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent⁸.

(5) Allowable "buy back" activities in order to benefit from the exemption of the prohibitions of Directive 2003/6/EC include issuers needing the possibility to reduce their capital, to meet obligations arising from debt financial instruments exchangeable into equity instruments, and to meet obligations arising from allocations of shares to employees.

⁸ OJ L 26, 31.1.1977, p. 1

(6) Transparency is a prerequisite for prevention of market abuse. To this end Member States may officially appoint mechanisms to be used for public disclosure of information required to be publicly disclosed under this Regulation.

(7) Issuers having adopted "buy-back" programmes shall inform their competent authority and, wherever required, the public.

(8) Trading in own shares in "buy-back" programmes may be carried out through derivative financial instruments.

(9) In order to prevent market abuse, the daily volume of trading in own shares in "buy-back" programmes shall be limited. However, some flexibility is necessary in order to respond to given market conditions such as a low level of transactions.

(10) Particular attention has to be paid to the selling of own shares during the life of a "buy-back" programme, to the possible existence of closed periods within issuers during which transactions are prohibited and to the fact that an issuer may have legitimate reasons to delay public disclosure of inside information.

(11) Stabilisation transactions mainly have the effect of providing support for the price of an offering of relevant securities during a limited time period if they come under selling pressure, thus alleviating sales pressure generated by short term investors and maintaining an orderly market in the relevant securities. This is in the interest of those investors having subscribed or purchased those relevant securities in

the context of a significant distribution, and of issuers. In this way, stabilisation can contribute to greater confidence of investors and issuers in the financial markets.

(12) Stabilisation activity may be carried out either on or off a regulated market and may be carried out by use of financial instruments other than those admitted or to be admitted to the regulated market which may influence the price of the instrument admitted or to be admitted to trading on a regulated market.

(13) Relevant securities shall include financial instruments that become fungible after an initial period because they are substantially the same, although they have different initial dividend or interest payment rights.

(14) In relation to stabilisation, block trades shall not be considered as a significant distribution of relevant securities as they are strictly private transactions.

(15) When Member States permit, in the context of an initial public offer, trading prior to the beginning of the official trading on a regulated market, the permission covers "when issued trading".

(16) Market integrity requires the adequate public disclosure of stabilisation activity by issuers or by entities undertaking stabilisation, acting or not on behalf of these issuers. Methods used for adequate public disclosure of such information should be efficient and can take into account market practices accepted by competent authorities.

(17) There should be adequate coordination in place between all investment firms and credit institutions undertaking stabilisation. During stabilisation, one investment firm or credit institution shall act as a central point of inquiry for any regulatory intervention by the competent authority in each Member State concerned.

(18) In order to avoid confusion of market participants, stabilisation activity should be carried out by taking into account the market conditions and the offering price of the relevant security and transactions to liquidate positions established as a result of stabilisation activity should be undertaken to minimise market impact having due regard to prevailing market conditions.

(19) Overallotment facilities and "greenshoe options" are closely related to stabilisation, by providing resources and hedging for stabilisation activity.

(20) Particular attention should be paid to the exercise of an overallotment facility by an investment firm or a credit institution for the purpose of stabilisation when it results in a position uncovered by the "greenshoe option".

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

HAS ADOPTED THIS REGULATION:

CHAPTER I

DEFINITIONS

Article 1

Subject matter

This Regulation lays down the conditions to be met by buy-back programmes and the stabilisation of financial instruments in order to benefit from the exemption provided for in Article 8 of Directive 2003/6/EC.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply in addition to those laid down in Directive 2003/6/EC:

1. “investment firm” means any legal person as defined in point (2) of Article 1 of Council Directive 93/22/EEC⁹;
2. “credit institution” means a legal person as defined in Article 1(1) of Directive 2000/12/EC of the European Parliament and the Council¹⁰;
3. “buy-back programmes” means trading in own shares in accordance with Articles 19 to 24 of Council Directive 77/91/EEC;
4. “time-scheduled 'buy-back' programme” means a "buy-back" programme where the dates and quantities of securities to be traded during the time period of the programme are set out at the time of the public disclosure of the "buy-back" programme;
5. “adequate public disclosure” means disclosure made in accordance with the procedure laid down in Articles 102(1) and 103 of Directive 2001/34/EC of the European Parliament and of the Council¹¹;
6. “relevant securities” means transferable securities as defined in Directive 93/22/EEC, which are admitted to trading on a regulated market or for which a request for admission to trading on such a market has been made, and which are the subject of a significant distribution;

⁹ OJ L 141, 11.6.1993, p. 27

¹⁰ OJ L 126, 26.5.2005, p. 1

¹¹ OJ L 184, 6.7.2001, p. 1

7. “stabilisation” means any purchase or offer to purchase relevant securities, or any transaction in associated instruments equivalent thereto, by investment firms or credit institutions, which is undertaken in the context of a significant distribution of such relevant securities exclusively for supporting the market price of these relevant securities for a predetermined period of time, due to a selling pressure in such securities;
8. “associated instruments” means the following financial instruments (including those which are not admitted to trading on a regulated market, or for which a request for admission to trading on such a market has not been made, provided that the relevant competent authorities have agreed to standards of transparency for transactions in such financial instruments):
 - (a) contracts or rights to subscribe for, acquire or dispose of relevant securities;
 - (b) financial derivatives on relevant securities;
 - (c) where the relevant securities are convertible or exchangeable debt instruments, the securities into which such convertible or exchangeable debt instruments may be converted or exchanged;
 - (d) instruments which are issued or guaranteed by the issuer or guarantor of the relevant securities and whose market price is likely to materially influence the price of the relevant securities, or vice versa;
 - (e) where the relevant securities are securities equivalent to shares, the shares represented by those securities (and any other securities equivalent to those shares).

9. “significant distribution” means an initial or secondary offer of relevant securities, publicly announced and distinct from ordinary trading both in terms of the amount in value of the securities offered and the selling methods employed;
10. “offer or” means the prior holders of, or the entity issuing, the relevant securities;
11. “allotment” means the process or processes by which the number of relevant securities to be received by investors who have previously subscribed or applied for them is determined;
12. “ancillary stabilisation” means the exercise of an over-allotment facility or of a greenshoe option by investment firms or credit institutions, in the context of a significant distribution of relevant securities, exclusively for facilitating stabilisation activity;
13. “over-allotment facility” means a clause in the underwriting agreement or lead management agreement which permits acceptance of subscriptions or offers to purchase a greater number of relevant securities than originally offered;
14. “greenshoe option” means an option granted by the offeror in favour of the investment firm(s) or credit institution(s) involved in the offer for the purpose of covering over-allotments, under the terms of which such firm(s) or institution(s) may purchase up to a certain amount of relevant securities at the offer price for a certain period of time after the offer of the relevant securities.

CHAPTER II

"BUY-BACK" PROGRAMMES

Article 3

Objectives of buy-back programmes

In order to benefit from the exemption provided for in Article 8 of Directive 2003/6/EC, a buy-back programme must comply with Articles 4, 5 and 6 of this Regulation and the sole purpose of that buy-back programme must be to reduce the capital of an issuer (in value or in number of shares) or to meet obligations arising from any of the following:

- (a) debt financial instruments exchangeable into equity instruments;
- (b) employee share option programmes or other allocations of shares to employees of the issuer or of an associate company.

Article 4

Conditions for "buy-back" programmes and disclosure

1. The "buy-back" programme must comply with the conditions laid down by Article 19(1) of Directive 77/91/EEC.
2. Prior to the start of trading, full details of the programme approved in accordance with Article 19(1) of Directive 77/91/EEC must be adequately disclosed to the public in Member States in which an issuer has requested admission of its shares to trading on a regulated market.

Those details must include the objective of the programme as referred to in Article 3, the maximum consideration, the maximum number of shares to be acquired and the duration of the period for which authorisation for the programme has been given.

Subsequent changes to the programme must be subject to adequate public disclosure in Member States.

3. The issuer must have in place the mechanisms ensuring that it fulfils trade reporting obligations to the competent authority of the regulated market on which the shares have been admitted to trading. These mechanisms must record each transaction

related to "buy-back" programmes, including the information specified in Article 20(1) of Directive 93/22/EEC.

4. The issuer must publicly disclose details of all transactions as referred to in paragraph 3 no later than the end of the seventh daily market session following the date of execution of such transactions.

Article 5

Conditions for trading

1. In so far as prices are concerned, the issuer must not, when executing trades under a "buy-back" programme, purchase shares at a price higher than the higher of the price of the last independent trade and the highest current independent bid on the trading venues where the purchase is carried out.

If the trading venue is not a regulated market, the price of the last independent trade or the highest current independent bid taken in reference shall be the one of the regulated market of the Member State in which the purchase is carried out.

Where the issuer carries out the purchase of own shares through derivative financial instruments, the exercise price of those derivative financial instruments shall not be above the higher of the price of the last independent trade and the highest current independent bid.

2. In so far as volume is concerned, the issuer must not purchase more than 25 % of the average daily volume of the shares in any one day on the regulated market on which the purchase is carried out.

The average daily volume figure must be based on the average daily volume traded in the month preceding the month of public disclosure of that programme and fixed on that basis for the authorised period of the programme.

Where the programme makes no reference to that volume, the average daily volume figure must be based on the average daily volume traded in the 20 trading days preceding the date of purchase.

3. For the purposes of paragraph 2, in cases of extreme low liquidity on the relevant market, the issuer may exceed the 25 % limit, provided that the following conditions are met:

- (a) the issuer informs the competent authority of the relevant market, in advance, of its intention to deviate from the 25 % limit;
- (b) the issuer discloses adequately to the public the fact that it may deviate from the 25 % limit;
- (c) the issuer does not exceed 50 % of the average daily volume.

Article 6

Restrictions

1. In order to benefit from the exemption provided by Article 8 of Directive 2003/6/EC, the issuer shall not, during its participation in a buy-back programme, engage in the following trading:
 - (a) selling of own shares during the life of the programme;
 - (b) trading during a period which, under the law of the Member State in which trading takes place, is a closed period;
 - (c) trading where the issuer has decided to delay the public disclosure of inside information in accordance with Article 6(2) of Directive 2003/6/EC.
2. Paragraph 1(a) shall not apply if the issuer is an investment firm or credit institution and has established effective information barriers (Chinese Walls) subject to supervision by the competent authority, between those responsible for the handling of inside information related directly or indirectly to the issuer and those responsible for any decision relating to the trading of own shares (including the trading of own shares on behalf of clients), when trading in own shares on the basis of such any decision. Paragraphs 1(b) and (c) shall not apply if the issuer is an investment firm or credit institution and has established effective information barriers (Chinese Walls) subject

to supervision by the competent authority, between those responsible for the handling of inside information related directly or indirectly to the issuer (including trading decisions under the "buy-back" programme) and those responsible for the trading of own shares on behalf of clients, when trading in own shares on behalf of those clients.

3. Paragraph 1 shall not apply if:

- (a) the issuer has in place a time-scheduled "buy-back" programme; or
- (b) the "buy-back" programme is lead-managed by an investment firm or a credit institution which makes its trading decisions in relation to the issuer's shares independently of, and without influence by, the issuer with regard to the timing of the purchases.

CHAPTER III

STABILISATION OF A FINANCIAL INSTRUMENT

Article 7

Conditions for stabilisation

In order to benefit from the exemption provided for in Article 8 of Directive 2003/6/EC, stabilisation of a financial instrument must be carried out in accordance with Articles 8, 9 and 10 of this Regulation.

Article 8

Time-related conditions for stabilisation

1. Stabilisation shall be carried out only for a limited time period.
2. In respect of shares and other securities equivalent to shares, the time period referred to in paragraph 1 shall, in the case of an initial offer publicly announced, start on the

date of commencement of trading of the relevant securities on the regulated market and end no later than 30 calendar days thereafter.

Where the initial offer publicly announced takes place in a Member State that permits trading prior to the commencement of trading on a regulated market, the time period referred to in paragraph 1 shall start on the date of adequate public disclosure of the final price of the relevant securities and end no later than 30 calendar days thereafter, provided that any such trading is carried out in compliance with the rules, if any, of the regulated market on which the relevant securities are to be admitted to trading, including any rules concerning public disclosure and trade reporting.

3. In respect of shares and other securities equivalent to shares, the time period referred to in paragraph 1 shall, in the case of a secondary offer, start on the date of adequate public disclosure of the final price of the relevant securities and end no later than 30 calendar days after the date of allotment.
4. In respect of bonds and other forms of securitised debt (which are not convertible or exchangeable into shares or into other securities equivalent to shares), the time period referred to in paragraph 1 shall start on the date of adequate public disclosure of the terms of the offer of the relevant securities (i.e. including the spread to the benchmark, if any, once it has been fixed) and end, whatever is earlier, either no later than 30 calendar days after the date on which the issuer of the instruments received the proceeds of the issue, or no later than 60 calendar days after the date of allotment of the relevant securities.
5. In respect of securitised debt convertible or exchangeable into shares or into other securities equivalent to shares, the time period referred to in paragraph 1 shall start on the date of adequate public disclosure of the final terms of the offer of the relevant securities and end, whatever is earlier, either no later than 30 calendar days after the

date on which the issuer of the instruments received the proceeds of the issue, or no later than 60 calendar days after the date of allotment of the relevant securities.

Article 9

Disclosure and reporting conditions for stabilisation

1. The following information shall be adequately publicly disclosed by issuers, offerors, or entities undertaking the stabilisation acting, or not, on behalf of such persons, before the opening of the offer period of the relevant securities:
 - (a) the fact that stabilisation may be undertaken, that there is no assurance that it will be undertaken and that it may be stopped at any time;
 - (b) the fact that stabilisation transactions are aimed to support the market price of the relevant securities;
 - (c) the beginning and end of the period during which stabilisation may occur;
 - (d) the identity of the stabilisation manager, unless this is not known at the time of publication in which case it must be publicly disclosed before any stabilisation activity begins;
 - (e) the existence and maximum size of any overallotment facility or greenshoe option, the exercise period of the greenshoe option and any conditions for the use of the overallotment facility or exercise of the greenshoe option.

The application of the provisions of this paragraph shall be suspended for offers under the scope of application of the measures implementing Directive 2004/.../EC (prospectus Directive), from the date of application of these measures.

2. Without prejudice to Article 12(1)(c) of Directive 2003/6/EC, the details of all stabilisation transactions must be notified by issuers, offerors, or entities undertaking the stabilisation acting, or not, on behalf of such persons, to the competent authority of the relevant market no later than the end of the seventh daily market session following the date of execution of such transactions.
3. Within one week of the end of the stabilisation period, the following information must be adequately disclosed to the public by issuers, offerors, or entities undertaking the stabilisation acting, or not, on behalf of such persons:
 - (a) whether or not stabilisation was undertaken;
 - (b) the date at which stabilisation started;
 - (c) the date at which stabilisation last occurred;
 - (d) the price range within which stabilisation was carried out, for each of the dates during which stabilisation transactions were carried out.
4. Issuers, offerors, or entities undertaking the stabilisation, acting or not, on behalf of such persons, must record each stabilisation order or transaction with, as a minimum, the information specified in Article 20(1) of Directive 93/22/EEC extended to financial instruments other than those admitted or going to be admitted to the regulated market.
5. Where several investment firms or credit institutions undertake the stabilisation acting, or not, on behalf of the issuer or offeror, one of those persons shall act as central point of inquiry for any request from the competent authority of the regulated market on which the relevant securities have been admitted to trading.

Article 10

Specific price conditions

1. In the case of an offer of shares or other securities equivalent to shares, stabilisation of the relevant securities shall not in any circumstances be executed above the offering price.
2. In the case of an offer of securitised debt convertible or exchangeable into instruments as referred to in paragraph 1, stabilisation of those instruments shall not in any circumstances be executed above the market price of those instruments at the time of the public disclosure of the final terms of the new offer.

Article 11

Conditions for ancillary stabilisation

In order to benefit from the exemption provided for in Article 8 of Directive 2003/6/EC, ancillary stabilisation must be undertaken in accordance with Article 9 of this Regulation and with the following:

- (a) relevant securities may be overallocated only during the subscription period and at the offer price;
- (b) a position resulting from the exercise of an overallocation facility by an investment firm or credit institution which is not covered by the greenshoe option may not exceed 5 % of the original offer;
- (c) the greenshoe option may be exercised by the beneficiaries of such an option only where relevant securities have been overallocated;
- (d) the greenshoe option may not amount to more than 15 % of the original offer;

- (e) the exercise period of the greenshoe option must be the same as the stabilisation period required under Article 8;
- (f) the exercise of the greenshoe option must be disclosed to the public promptly, together with all appropriate details, including in particular the date of exercise and the number and nature of relevant securities involved.

CHAPTER IV

FINAL PROVISION

Article 12

Entry into force

This Regulation shall enter into force in Member States on the day of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 22 December 2003.

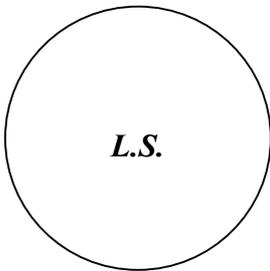
For the Commission

Frederik Bolkestein

Member of the Commission

GIVEN under my Official Seal,

5th day of July 2005



Micheál Martin

Minister for Enterprise, Trade
and Employment.

EXPLANATORY NOTE

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

These Regulations along with Part 4 of The Investment Funds, Companies and Miscellaneous Provisions Act 2005 give effect to Directive 2003/6/EC and the implementing Directives 2003/124/EC, 2003/125/EC and 2004/72/EC on insider dealing and market manipulation (market abuse).

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