



STATUTORY INSTRUMENTS.

**S.I. No. 631 of 2017**



EUROPEAN UNION (SECURITIES FINANCING TRANSACTIONS)  
REGULATIONS 2017

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I, PASCHAL DONOHOE, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving full effect to Regulation (EU) No 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012<sup>1</sup>, hereby make the following regulations:

*Part 1*

Preliminary and General

*Citation*

1. These Regulations may be cited as the European Union (Securities Financing Transactions) Regulations 2017.

*Interpretation*

2. (1) In these Regulations-

“Act of 1942” means the Central Bank Act 1942 (No. 22 of 1942);

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

“Bank” means the Central Bank of Ireland;

“Court” means the High Court;

“data equipment” means equipment for processing data;

“non-regulated financial service provider” means a person who is not a regulated financial service provider but who otherwise is a person subject to these Regulations or the SFT Regulation;

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

“regulated financial service provider” has the same meaning as it has in section 2(1) of the Act of 1942;

<sup>1</sup>OJ No. L 337, 23.12.2015, p.1

*Notice of the making of this Statutory Instrument was published in  
“Iris Oifigiúil” of 9th January, 2018.*

“relevant record” means a record relating to the subject matter of the SFT Regulation and these Regulations;

“SFT Regulation” means Regulation (EU) No 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012<sup>2</sup>.

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

## *Part 2*

### Competent authority for SFT Regulation and these Regulations

#### *Designation of Bank as competent authority*

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

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

(2) In the case of pension scheme arrangements that are monitored and supervised by the Pensions Authority, in accordance with the provisions of the Pensions Acts 1990 to 2015, the Pensions Authority shall, where requested in writing by the Bank, provide the Bank with such assistance and information as is necessary to enable the Bank to perform its functions under the SFT Regulation and these Regulations.

#### *Obligation to cooperate*

4. (1) The Bank shall, whenever necessary for the purpose of carrying out its duties under the SFT Regulation, cooperate closely with ESMA and with other competent authorities and shall, in particular, exchange information and cooperate in order to identify and remedy infringements of the SFT Regulation.

(2) The Bank may refuse to act on a request to cooperate or exchange information in accordance with paragraph (1) only where:

- (a) judicial proceedings before a court in the State have already been initiated in respect of the same actions and the same persons, or
- (b) final judgment has already been delivered in the State in respect of the same persons and the same actions.

(3) In the event of a refusal under paragraph (2), the Bank shall notify the requesting competent authority and ESMA accordingly, providing as detailed information as possible in relation to the reasons for the refusal.

<sup>2</sup>OJ No. L 337, 23.12.2015, p.1

*Part 3*

## Powers of Bank

*Powers of Bank*

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

(2) The powers provided for in this Part in respect of the Bank shall not be exercised in a manner or for a purpose inconsistent with their obligations pursuant to the SFT Regulation and these Regulations.

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

*Authorised officers*

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

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

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

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

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

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

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

*Powers of authorised officers*

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

- (a) subject to Regulation 8(1), at all reasonable times enter any place at which the authorised officer reasonably believes there are relevant records;
- (b) subject to Regulation 8(1), enter any place without prior notice, at which the authorised officer reasonably believes that a person to whom the SFT Regulation or these Regulations apply, is carrying on, or has carried on, business activities which are relevant to the SFT Regulation, in order to ensure that obligations under the SFT Regulation and these Regulations are being complied with;
- (c) search and inspect a place and any relevant records at that place;
- (d) secure for later inspection any place, or any part of any place, for such a period as may reasonably be necessary for the purposes of the exercise of his or her powers under this Part;
- (e) require a person at a place or any person employed in connection with a business carried out at such place, to produce to the authorised officer relevant records, and where any of those relevant records are in a non-legible form to—
  - (i) reproduce them in a legible form, or
  - (ii) to give the authorised officer such information as that officer reasonably requires regarding entries in them;
- (f) inspect and take copies of relevant records inspected or produced under this Regulation (including, in the case of information in a non-legible form, a copy of all or part of the information in a permanent legible form);
- (g) secure for later inspection any relevant records so provided or found and any data equipment, including any computer, on which the authorised officer reasonably believes relevant records may be held;
- (h) remove and retain some or all of the relevant records inspected or produced under this Regulation for such period as may be reasonable to facilitate their further examination;
- (i) require a person at a place to give to the authorised officer information (including information by way of a written report) that that officer reasonably requires in relation to activities covered by the SFT Regulation and these Regulations and to produce all relevant records that the person has in their possession or to which they have access;

- (j) require a person at a place by whom, or on whose behalf, data equipment is or has been used, or a person who has charge of, or is otherwise concerned with the operation of, that equipment or any associated apparatus or material, to give the authorised officer access and all reasonable assistance in relation to its operation;
  - (k) require a person at a place to explain entries in relevant records to the authorised officer;
  - (l) require a person to whom this Part applies to answer questions.
- (2) Where a person from whom production of a relevant record is required claims a lien over it, its production does not affect the lien.
- (3) An obligation to produce a relevant record or report, or to provide information or assistance, under this Regulation applies to—
- (a) an examiner, liquidator or receiver of, or any person who is or has been an officer or employee or agent of, a person to whom these Regulations apply, or
  - (b) any other person who appears to the Bank or the authorised officer concerned to have the relevant record or report in his or her possession or under his or her control or the ability to provide information or assistance, as the case may be.
- (4) When exercising a power under this Part, an authorised officer may, where the officer considers it necessary, be accompanied by one or more—
- (a) members of the Garda Síochána,
  - (b) authorised officers.
- (5) In this Regulation “place” means a place entered by an authorised officer pursuant to paragraph (1)(a) or (b) and includes the following:
- (a) a dwelling or a part thereof;
  - (b) a building or part thereof;
  - (c) a vehicle, whether mechanically propelled or not;
  - (d) a vessel, whether sea-going or not.

*Search warrant*

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

(2) Where an authorised officer in the exercise of the authorised officer’s powers under Regulation 7 is prevented from entering any place, whether or

not a private dwelling, where he or she believes that there are relevant records, the authorised officer may apply to a judge of the District Court for a warrant under this Regulation authorising the entry by the authorised officer into the place.

(3) Without prejudice to the powers conferred on an authorised officer by or under any provision of these Regulations, an authorised officer may, for the purposes of an investigation into an offence under these Regulations apply to a judge of the District Court for a warrant in relation to any place.

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

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

that judge may issue a warrant under the judge's hand authorising one or more authorised officers accompanied, if the judge considers it appropriate to so provide, by such number of members of the Garda Síochána as may be specified in the warrant, at any time within 4 weeks from the date of issue of the warrant, to enter, if need be by force, the place or private dwelling and exercise any of the powers referred to in Regulation 7.

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

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

- (a) ensure the integrity of financial markets in—
  - (i) the State, or
  - (ii) where relevant, another Member State,
- (b) enhance investor confidence in those markets, or
- (c) prevent any person from contravening or continuing to contravene the SFT Regulation or these Regulations,

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) take such actions relating to any securities financing transaction as may be specified in the direction;
- (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 securities financing transactions 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 the SFT Regulation or these Regulations.

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

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

Court may, as it thinks fit, on the hearing of the application, make or refuse to make an order providing for such relief.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) ensuring compliance by the non-financial counterparty concerned with the SFT Regulation or these Regulations, or
  - (b) preventing any person from contravening or continuing to contravene a provision of the SFT Regulation or these Regulations.
- (2) A contravention notice shall—
- (a) state that the Bank is of the opinion referred to in paragraph (1),
  - (b) state the reason for that opinion,
  - (c) identify the provisions of the SFT Regulation or these Regulations in respect of which the Bank has formed the opinion,
  - (d) direct the person to remedy the contravention or the matters occasioning the notice by a date specified in the notice that shall not be earlier than the end of the period within which an appeal may be made under paragraph (6),
  - (e) include information regarding the making of an appeal under paragraph (6),
  - (f) include such matters (if any) as the Bank considers appropriate, and
  - (g) be signed and dated by a person duly authorised by the Bank to do so.
- (3) A person on whom a contravention notice has been issued, under this Regulation, who is of the opinion that the contravention notice has been complied with shall confirm in writing to the Bank that the matters referred to in the notice have been so remedied.

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

(5) Where the Bank is satisfied that erroneous or incomplete details have been reported to a trade repository by a person who is a non-financial counterparty [in respect of any securities financing transaction, it shall, by way of a contravention notice issued in accordance with this Regulation, have the power

to direct the person that reported such details to rectify any errors or omissions to the satisfaction of the Bank and to subsequently resubmit those details to the trade repository without delay.

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

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

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

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

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

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

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

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

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

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

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

(13) The Court may make such interim or interlocutory order as it considers appropriate pending determination of an application made under paragraph (11) and the Court may not refuse interim or interlocutory relief solely on the basis

that the Bank may not suffer damage if relief were not granted pending determination of the application.

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

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

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

### *Privilege*

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

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

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

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

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

- (a) examining the information, and
  - (b) preparing a report for the Court with a view to assisting or facilitating the court in the making by the Court of its determination as to whether the information is privileged legal material.
- (5) An application under paragraph (1)—
- (a) shall be by motion, and
  - (b) may, where the Court is satisfied that it is desirable, because of the nature or the circumstances of the case, or having regard to the interests of justice, then the whole or any part of proceedings relating to an application under this Regulation before it may be heard otherwise than in public.
- (6) In this Regulation, “privileged legal material” means information which, in the opinion of the Court, a person is entitled to refuse to produce on the grounds of legal professional privilege.

#### *Part 4*

##### Enforcement in relation to non-regulated financial service providers

##### *Interpretation*

##### 12. In this Part—

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

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

“assessment” means an assessment referred to in Regulation 13;

“assessor” means an assessor appointed by the Bank under Regulation 13;

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

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

“prescribed contravention” means a contravention by a non-regulated financial service provider of Article 4 or 15 of the SFT Regulation;

“sanction” means any sanction referred to in Regulation 22;

“specified sanction” in relation to an adverse assessment, means a sanction or sanctions referred to in Regulation 13(8)(c) that may be imposed on the assessee;

*Appointment of assessor*

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

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

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

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

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

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

- (a) a statement that the assessor is appointed by the Bank under this Regulation;
- (b) a statement in summary form of the grounds for conducting the assessment;
- (c) a statement that, within a reasonable time specified by the assessor in the notice, the assessee may—
  - (i) make submissions in writing to the assessor, and
  - (ii) request the assessor to be permitted to make oral submissions about the matters to which the notice relates;

(d) a statement that the assessor shall conduct the assessment even if no submissions referred to in subparagraph (c) are made.

(6) The assessor shall—

(a) consider any submissions referred to in paragraph (5)(c) made by the assessee, and

(b) conduct such investigations relating to the assessment as the assessor considers appropriate before issuing the assessment.

(7) The assessor shall issue the assessment to the Bank when the assessment is made.

(8) Where the assessor decides that a prescribed contravention is being committed or has been committed, the assessor shall ensure that the assessment includes—

(a) a statement of the grounds upon which the assessor made the assessment that the assessee is committing or has committed the contravention,

(b) a statement in summary form of the evidence upon which the assessment is based, and

(c) a statement of the sanction or sanctions, if any, which the assessor considers is or are appropriate to be imposed on the assessee in respect of the contravention.

(9) The appointment of an assessor may be for a specified or unspecified period.

(10) Subject to Regulations 18 and 19(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*

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

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

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

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

- (c) not use any information obtained during an assessment for any purpose other than the performance of the assessor's functions under this Part,
- (d) not engage in misconduct during the assessment,
- (e) perform the assessor's functions in accordance with the procedures and requirements set out in this Part, and
- (f) not issue an assessment that is contrary to law.

*Power to require witnesses to appear and give evidence*

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

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

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

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

(4) Where a person (in this paragraph referred to as "person concerned")—

- (a) fails to comply with a notice under paragraph (1),
- (b) threatens or insults the assessor or any witness or person required to attend before the assessor,
- (c) interrupts the proceedings of, or does not behave in an appropriate manner before, the assessor,
- (d) obstructs or attempts to obstruct the assessor,
- (e) discloses, or authorises the disclosure of, evidence given before the assessor or any of the contents of a document produced to the assessor that the assessor has instructed not to be disclosed, or
- (f) does anything else that, if the assessor were a Court of law having power to commit for contempt, would be contempt for that Court, then—

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

*Referral to Court on question of law*

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

- (2) Where a question of law is referred under paragraph (1)—
  - (a) the assessor shall send to the Court all documents before the assessor that are relevant to the matter in question, and
  - (b) at the end of the proceedings in the Court in relation to the reference, the Court shall cause the documents to be returned to the assessor.

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

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

- (a) issue the assessee with a copy of the adverse assessment (or, as the Bank thinks fit, so much of the adverse assessment as constitutes the statement referred to in Regulation 13(8)), and
- (b) advise the assessee that—
  - (i) the assessee may appeal against the adverse assessment to the Court under Regulation 18, and
  - (ii) the Bank may apply to the Court under Regulation 21 for an order confirming the adverse assessment (including the specified sanctions).

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

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

18. (1) The assessee may appeal against an adverse assessment (including the specified sanctions) not later than 28 days after the Bank has complied with Regulation 17(1) in relation to the assessee, or within such further period as the Court allows.

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

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

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

(a) subject to paragraph (6), an order confirming, varying or setting aside the adverse assessment (including the specified sanctions), whether in whole or in part, or

(b) an order remitting the case to be decided again by the Bank in accordance with the directions of the Court.

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

(6) No variation of an adverse assessment under paragraph (4)(a) may provide for the imposition of a sanction on the assessee which is not a sanction referred to in Regulation 22(a) to (g).

*Power to correct assessments*

19. (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 13(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*

20. (1) Where—

- (a) no appeal under Regulation 18 against the adverse assessment (including the specified sanctions) is lodged with the Court within the period for lodging an appeal, or
- (b) an appeal under Regulation 18 against the adverse assessment (including the specified sanctions) which has been lodged with the Court within the period for lodging the appeal is withdrawn or abandoned,

then the specified sanctions, pursuant to Regulation 22(a) to (e) shall take effect—

- (i) in case of subparagraph (a), on the day after the date of expiry of the period allowed for an appeal under Regulation 17, or
- (ii) in case of subparagraph (b), on the day after the date of the withdrawal or abandonment, as the case may be.

(2) Where an appeal under Regulation 18 against the adverse assessment is lodged with the Court within the period allowed for lodging the appeal, then the specified sanctions pursuant to Regulation 21(a) to (e), as confirmed or varied in the order, if any, shall take effect on the date of that order or such other date as the Court may specify in the order.

*Enforcement of adverse assessment (including specified sanctions)*

21. (1) Where—

- (a) no appeal under Regulation 18 against an adverse assessment (including the specified sanctions) is lodged with the Court within the period for lodging an appeal, or
- (b) an appeal under Regulation 18 against an adverse assessment (including the specified sanctions) which has been lodged with the Court within the period for lodging the appeal is withdrawn or abandoned,

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

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

- (a) subject to paragraph (7), an order confirming, varying or setting aside the adverse assessment (including the specified sanctions) whether in whole or in part, or
- (b) an order remitting the case to be decided again by the Bank in accordance with the directions of the Court.

- (3) The Court shall not hear an application under paragraph (1) unless—
- (a) the assessee appears at the hearing as respondent to the application, or
  - (b) if the assessee does not so appear, the Court is satisfied that a copy of the application made pursuant to paragraph (1) has been served on the assessee.
- (4) Where the Court is satisfied, because of the nature or the circumstances of the case or otherwise in the interests of justice, that it is desirable that the whole or any part of proceedings relating to the application under paragraph (1) should not be heard in public then, where the Court so directs, the proceedings may be heard otherwise than in public.
- (5) The Court may, on an application under paragraph (1) make such interim or interlocutory orders as the Court considers necessary in the circumstances.
- (6) The determination of the Court on the hearing of an application under paragraph (1) shall be final, except that the Bank or the respondent, if any, may apply to the Supreme Court to review the determination on a question of law.
- (7) No variation of an adverse assessment under paragraph (2)(a) may provide for the imposition of a sanction on the assessee which is not a sanction referred to in Regulation 22(a) to (g).

*Sanctions that may be imposed by Bank*

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

- (a) an order requiring the person responsible for the infringement to cease the conduct and to desist from a repetition of that conduct;
- (b) a public statement which indicates the person responsible and the nature of the infringement in accordance with Article 26 of the SFT Regulation;
- (c) withdrawal or suspension of the authorisation;
- (d) a temporary ban against any person discharging managerial responsibilities, or any natural person who is held responsible for such an infringement, from exercising management functions;
- (e) maximum administrative pecuniary sanctions of at least three times the amount of the profits gained or losses avoided because of the infringement where those can be determined by the relevant authority, even if those sanctions exceed the amounts referred to in points (f) and (g);
- (f) in respect of a natural person, a pecuniary sanction not exceeding EUR 5 000 000 or, in the Member States whose currency is not the euro, the corresponding value in the national currency on 12 January 2016;

- (g) in respect of legal persons, a pecuniary sanction not exceeding:
- (i) EUR 5 000 000 or, in the Member States whose currency is not the euro, the corresponding value in the national currency on 12 January 2016, or up to 10 % of the total annual turnover of the legal person according to the last available accounts approved by the management body for infringements of Article 4 of the SFT Regulation;
  - (ii) EUR 15 000 000 or, in the Member States whose currency is not the euro, the corresponding value in the national currency on 12 January 2016, or up to 10 % of the total annual turnover of the legal person according to the last available accounts approved by the management body for infringements of Article 15 of the SFT Regulation.

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

23. (1) A sanction referred to in Regulation 22, in respect of a prescribed contravention, shall not be imposed on a person where the person has been found guilty or not guilty of having committed an offence under a provision of these Regulations, and all or some of the acts constituting that offence also constitute the prescribed contravention.

(2) Where—

- (a) a sanction, referred to in Regulation 22 is to be imposed on the assessee by virtue of an order obtained under Regulation 18(4) or 21(2)(a), and
- (b) the acts which constitute the prescribed contravention to which the sanction relates also constitute an offence under a law of the State,

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

(3) A sanction in respect of a prescribed contravention shall not be imposed on the assessee where—

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

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

24. (1) Where the Bank has reason to suspect, based on reasonable grounds, that an assessee (in this Regulation referred to as a “relevant party”) is committing or has committed a prescribed contravention, it may enter into an agreement in writing with the relevant party to resolve the matter (including at any time before an assessment, if any, has been issued in respect of the relevant party).

- (2) An agreement entered into under paragraph (1)—
- (a) is binding on the Bank and the relevant party, and
  - (b) may include terms under which the relevant party accepts the imposition of sanctions.
- (3) An agreement entered into under paragraph (1) may be enforced by the Bank or the relevant party in a court of competent jurisdiction.

*Part 5*

Sanctions

*Sanctions*

25. (1) Notwithstanding Part IIIC of the Act of 1942 and the sanctions set out in section 33AQ of the Act of 1942, any of the sanctions referred to in paragraph (2) may be imposed by the Bank—

- (a) following an inquiry under section 33AO of the Act of 1942, or
- (b) in accordance with section 33AR or section 33AV of the Act of 1942,

for the infringements of Articles 4 and 15 of the SFT Regulation and, for the purposes of these Regulations, any reference in the Act of 1942 to the sanctions set out in section 33AQ of that Act is to be read as a reference to the sanctions set out in this Regulation.

- (2) The sanctions mentioned in paragraph (1) are:
- (a) an order requiring the person responsible for the infringement to cease, and desist from, the conduct concerned;
  - (b) a public statement which indicates the person responsible for the infringement and the nature of the infringement concerned, in accordance with Article 26 of the SFT Regulation;
  - (c) withdrawal and suspension of the authorisation of any regulated financial service provider;
  - (d) a temporary ban against any person discharging managerial responsibilities, or any natural person who is held responsible for such an infringement, from exercising management functions;
  - (e) administrative pecuniary sanctions of up to three times the amount of the profits gained or losses avoided as a result of an infringement where that amount can be determined and even if the amount determined is greater than the amounts referred to in points paragraphs (f) and (g);
  - (f) in respect of a natural person, administrative pecuniary sanctions of up to €5,000,000;

- (g) in the case of a legal person,
- (i) for infringements of Article 4, administrative pecuniary sanctions of up to €5,000,000 or up to 10% of the total annual turnover of the legal person according to the last available accounts approved by the management body; or
  - (ii) for infringements of Article 15, administrative pecuniary sanctions of up to €15,000,000 or up to 10% of the total annual turnover of the legal person according to the last available accounts approved by the management body;

where the legal person is a parent undertaking or a subsidiary of the parent undertaking which has to prepare consolidated financial accounts according to Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013<sup>3</sup>, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income according to the relevant accounting regime according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

*Application of sanctions*

26. The assessor, when determining the appropriate sanction or sanctions under Regulation 13(8)(c), or the Bank, when determining the type and level of sanction or sanctions to be imposed under Regulation 25 in respect of a prescribed contravention, shall take into account all relevant circumstances, including, where appropriate:

- (a) the gravity and the duration of the contravention;
- (b) the degree of responsibility of the person responsible for the contravention;
- (c) the financial strength of the person responsible for the contravention, as indicated in particular by the total turnover of a the person (in the case of a legal person) or the annual income of a natural person;
- (d) the level of—
  - (i) the profits gained or losses avoided by the person responsible for the contravention, or
  - (ii) the losses for third parties derived from the contravention,

insofar as those profits or losses can be determined;

- (e) the level of cooperation of the person responsible for the contravention, with the assessor or the Bank, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;

<sup>3</sup>OJ No. L 182, 29.6.2013, p. 19

- (f) previous contraventions, by the person responsible for the contravention.

*Publication of decisions*

27. (1) Subject to paragraph (5), the Bank shall publish on its official website all decisions imposing an administrative sanction or other measure for an infringement of the SFT Regulation.

(2) A publication under paragraph (1) shall—

- (a) be published without undue delay after the person sanctioned is informed of that decision, and
- (b) include at least information on the type and nature of the infringement and the identity of a natural or legal person on whom the sanction has been imposed.

(3) Where the decision to impose a sanction or other measure is subject to an appeal before a court or tribunal in the State, the Bank shall, without undue delay, also publish on its official website information on the appeal status and outcome thereof.

(4) The Bank shall publish on its official website all decisions annulling a previous decision to impose a sanction or a measure.

(5) Where the publication of the identity of a legal person or of the personal data of a natural person is considered by the Bank to be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data, or where publication jeopardises the stability of financial markets or an ongoing investigation, the Bank shall do one of the following:

- (a) delay the publication of the decision to impose the sanction or other measure until the moment when the reasons for non-publication cease to exist;
- (b) publish the decision to impose the sanction or other measure on an anonymous basis in a manner which is in conformity with the law of the State, if such anonymous publication ensures effective protection of the personal data;
- (c) not publish the decision to impose a sanction or other measure at all in the event that the options set out in subparagraphs (a) and (b) are considered to be insufficient to ensure:
  - (i) that the stability of financial markets would not be put in jeopardy, or
  - (ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.

(6) In the case of a decision to publish a sanction or other measure on an anonymous basis, the publication of the relevant data may be postponed for a reasonable period where it is envisaged that the reasons for anonymous publication will cease to apply within that period.

(7) The Bank shall inform ESMA of all administrative sanctions imposed but not published in accordance with paragraph (5)(c), including any appeal in relation thereto and the outcome thereof.

(8) The Bank shall ensure that information published under this Regulation remains on its official website for at least five years after its publication, provided that any personal data contained in such publication shall be kept on the website for such period as is necessary in accordance with the Data Protection Acts 1988 and 2003.

*Reporting to ESMA by Bank of its decisions*

28. (1) The Bank shall provide ESMA annually with aggregated information regarding all sanctions and other measures imposed by it under these Regulations.

(2) Where the Bank publishes information in accordance with Regulation 27, it shall at the same time report that fact to ESMA.

*Reporting of infringements*

29. (1) The Bank shall establish effective mechanisms to enable reporting to it of potential or actual infringements of Articles 4 and 15 of the SFT Regulation.

(2) The mechanisms referred to in paragraph (1) shall include at least the following:

- (a) specific procedures for the receipt and investigation of reports on potential or actual infringements of Article 4 or 15 and their follow-up, including the establishment of secure communication channels for such reports;
- (b) appropriate protection against, at a minimum, retaliation, discrimination or other types of unfair treatment for employees of financial and non-financial counterparties who report potential or actual infringements of Article 4 or 15 committed within the financial counterparty or non-financial counterparty concerned;
- (c) protection of personal data concerning both the person who reports the potential or actual infringement of Article 4 or 15 and the natural person who is allegedly responsible for an infringement;
- (d) protection of the identity of both the person who reports the infringement and the natural person who is allegedly responsible for an infringement, at all stages of the procedures unless such disclosure is required in the context of further investigation or subsequent administrative or judicial proceedings.

(3) Financial and non-financial counterparties shall have in place appropriate procedures for their employees to report actual or potential infringements internally through a specific, independent and autonomous channel.

*Right of appeal*

30. A decision taken or measure imposed under the SFT Regulation or these Regulations is an appealable decision for the purpose of Part VIIA of the Act of 1942.

*Amendment of Act of 1942 — prescribed contraventions*

31. The Act of 1942 is amended—

(a) in section 2(2A), by the insertion of the following paragraph:

“(ao) Regulation (EU) No 2015/2365 of the European Parliament and of the Council of 25 November 2015<sup>4</sup>,”

(b) in section 33AK(10) in the definition of “supervisory EU legal acts” by the insertion of the following subparagraph:

“(ab) Regulation (EU) No 2015/2365 of the European Parliament and of the Council of 25 November 2015<sup>5</sup>,”

(c) in section 33AN—

(i) in subsection (1)—

(I) by the insertion of the following definition:

“ “SFT Regulation” means Regulation (EU) No 2015/2365 of the European Parliament and of the Council of 25 November 2015<sup>6</sup>,”

(II) in the definition of “designated enactment”, by the insertion of “the SFT Regulation but (in relation to the SFT Regulation) wherever and only in so far as it imposes a requirement on a person who is not a regulated financial service provider,” after “4 July 2012,”,

(III) in the definition of “designated statutory instrument”, by the insertion of “European Union (Securities Financing Transactions) Regulations 2017 (S.I. No. 631 of 2017) but (in relation to the European Union (Securities Financing Transactions) Regulations 2017) wherever and only in so far as they impose a requirement on a person who is not a regulated financial service provider;” after “Act 2006”, and

<sup>4</sup>OJ No. L 337, 23.12.2015, p.1

<sup>5</sup>OJ No. L 337, 23.12.2015, p.1

<sup>6</sup>OJ No. L 337, 23.12.2015, p.1

(ii) by the insertion of the following subsection:

“(4) In this Part “prescribed contravention” means, in respect of the SFT Regulation, an infringement of Articles 4, 13, 14 or 15 of that Regulation.”,

(d) in section 33BC by the insertion of the following subsection:

“(12) This section does not apply where Regulation 6 of the European Union (Securities Financing Transactions) Regulations 2017 (S.I. No. 631 of 2017) applies.”,

and

(e) in Part 2 of Schedule 2 by the insertion of the following item after the last item:

“

[number to be inserted]	S.I. No. 631 of 2017	European Union (Securities Financing Transactions) Regulations 2017	The whole instrument
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”.

## Part 6

### Offences

#### *Offence — obstruction of authorised officer in exercise of officer’s powers*

32. (1) A person who—

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

commits an offence.

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

*Offence — false, etc. information*

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

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

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

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

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

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

*Prosecution of offences*

35. Summary proceedings for an offence under this Part may be brought and prosecuted by the Bank.



GIVEN under my Official Seal,  
22 December 2017.

PASCHAL DONOHOE,  
Minister for Finance.

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