



STATUTORY INSTRUMENTS.

S.I. No. 430 of 2019

EUROPEAN UNION (UNDERTAKINGS FOR COLLECTIVE
INVESTMENT IN TRANSFERABLE SECURITIES) (AMENDMENT)
REGULATIONS 2019

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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 further effect to Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009¹, Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009², Commission Directive 2010/43/EU of 1 July 2010³, Commission Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010⁴, Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014⁵ and Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014⁶, hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Union (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations 2019.

Definition

2. In these Regulations, “Principal Regulations” means the European Union (Undertakings for Collective Investment in Transferable Securities) Regulations (S.I. No. 352 of 2011).

Amendment of Regulation 3 of Principal Regulations

3. Regulation 3 of the Principal Regulations is amended by inserting the following definitions:

“ ‘MIFID II’ means Directive 2014/65 of the European Parliament and of the Council of 15 May 2014⁷ on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU;

‘MIFID II Regulations’ means the European Union (Markets in Financial Instruments) Regulations 2017 (S.I. No. 375 of 2017);”.

¹ OJ No. L 302, 17.11.2009, p. 32

² OJ No. L 302, 11.11.2009, p. 1

³ OJ No. L 176, 10.07.2010, p. 42

⁴ OJ No. L 331, 15.12.2010, p. 84

⁵ OJ No. L 173, 12.06.2014, p. 349

⁶ OJ No. L 257, 28.8.2014, p. 186

⁷ OJ No. L 173, 12.06.2014, p. 349

Amendment of Regulation 16 of Principal Regulations

4. Regulation 16 of the Principal Regulations is amended –
- (a) in paragraph (2)(a)(i), by substituting “Part 3 of Annex I to the MIFID II” for “Section C of the Annex to the MIFID”,
 - (b) in paragraph (2)(a)(ii)(I), by substituting “Part 3 of Annex I to the MIFID II” for “Annex I, Section C to Directive 2004/39/EC”,
 - (c) by substituting for paragraph (3) the following:

“(3) The definition in Regulation 3(1) of “management company” and Regulations 4(2), 9(10), 23(1)(a) to (l), (4) and (13), 31(1), 32(3) to (10) and (12) and 33(3) and (5) to (17) of the MIFID II Regulations shall, with all necessary modifications, apply to the provision of the services referred to in clauses (i) and (ii) of subparagraph (a) of paragraph (2) by a management company.”,
 - (d) by substituting for paragraph (4) the following:

“(4) A management company which provides individual portfolio management services shall comply with –

 - (a) Parts 6 and 7 of the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2017 (S.I. No. 604 of 2017), and
 - (b) Schedule 3 to the MIFID II Regulations.”,

and
 - (e) in paragraph (5), by substituting –
 - (i) “redemption moneys” for “salespersons moneys”, and
 - (ii) “Parts 6 and 7 of the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1))(Investment Firms) Regulations 2017” for “the MIFID Regulations”.

Amendment of Regulation 21 of Principal Regulations

5. Regulation 21 of the Principal Regulations is amended –
- (a) in paragraph (1), by substituting “Article 17 of the MIFID II” for “Article 10 of the MIFID”,
 - (b) in paragraph (2), by substituting “MIFID II” for “MIFID”,
 - (c) in paragraph (3), by substituting “Part 11 of the MIFID II Regulations” for “Part 15 of the MIFID Regulations”,
 - (d) by substituting for paragraph (4) the following:

“(4) Regulation 129 of the MIFID II Regulations shall, to the extent that it relates to the relevant provisions applied as specified in paragraph (2), apply, with all necessary modifications, to the relevant provisions as so applied.”,

and

(e) by substituting for paragraph (5) the following:

“(5) For the purposes of this Regulation—

- (a) the expressions “investment firm” and “investment firms” contained in Article 10 of the MIFID II, any of the relevant provisions, or Regulation 119 or Regulation 129(2) of the MIFID II Regulations, shall be construed as “management company” and “management companies” respectively, and
- (b) the term “the relevant provisions” means—
 - (i) Regulations 9 and 18(6)(b) of the MIFID II Regulations, and
 - (ii) Chapter 2 of Part 3 of the MIFID II Regulations.”.

Amendment of Regulation 33 of Principal Regulations

6. Regulation 33 of the Principal Regulations is amended by inserting after paragraph (2) the following paragraphs:

“(3) The assets of an investment company shall belong exclusively to the investment company.

(4) The assets referred to in paragraph (3) shall be segregated from the assets of the depositary or its agents and shall not be used to discharge, directly or indirectly, liabilities or claims against any other undertaking or entity and shall not be available for any such purpose.”.

Amendment of Regulation 37 of Principal Regulations

7. Regulation 37 of the Principal Regulations is amended by inserting after subsection (4) the following paragraph:

“(5) In the event of the insolvency of a depositary, or any third party, located in the Union –

- (a) to which custody of UCITS assets has been delegated, or
- (b) which holds cash assets of a UCITS,

neither the assets of a UCITS held in custody nor the cash assets shall be available for distribution among, or redistribution among, or realisation for the benefit of, creditors of the depositary or third party concerned.”.

Amendment of Regulation 68 of Principal Regulations

8. Regulation 68(1)(a) of the Principal Regulations is amended by substituting “MIFID II Regulations” for “MIFID Regulations”.

Amendment of Regulation 100 of Principal Regulations

9. Regulation 100(2) of the Principal Regulations is amended by substituting “Regulations 31, 32 and 33(3), (5), (6), (7), (13), (14), (15) and (16) of the MIFID II Regulations” for “Regulation 76 of the MIFID Regulations and, where applicable, Regulation 77 of the MIFID Regulations”.

Amendment of Regulation 138 of Principal Regulations

10. Paragraph (1) of Regulation 138 of the Principal Regulations is amended by –

- (a) substituting “Regulation 3(1) of the MIFID II Regulations” for “Regulation 3(1) of the MIFID Regulations”, and
- (b) substituting “under the MIFID II Regulations” for “under the MIFID Regulations”.

Amendment of Schedule 5 to Principal Regulations

11. Schedule 5 to the Principal Regulations is amended –

- (a) in paragraph 54(a)(iii), by substituting “or the MIFID II Regulations” for “or the MIFID Regulations”, and
- (b) in paragraph 59(2), by substituting “of the MIFID II Regulations” for “of the MIFID Regulations”.



GIVEN under my Official Seal,
13 August 2019

PASCHAL DONOHOE,
Minister for Finance.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2
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