



STATUTORY INSTRUMENTS

**S.I. No. 832 of 2007**

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EUROPEAN COMMUNITIES (UNDERTAKINGS FOR COLLECTIVE  
INVESTMENT IN TRANSFERABLE SECURITIES) (AMENDMENT)  
REGULATIONS 2007

**(Prn. A7/2326)**

EUROPEAN COMMUNITIES (UNDERTAKINGS FOR COLLECTIVE  
INVESTMENT IN TRANSFERABLE SECURITIES) (AMENDMENT)  
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I, MICHEÁL MARTIN, Minister for Enterprise, Trade and Employment in exercise of the powers conferred on me by Section 3 of the European Communities Act 1972 (No. 27 of 1972), as amended, and for the purpose of giving effect to Commission Directive 2007/16/EC of 19 March 2007 implementing Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards the clarification of certain definitions, hereby make the following Regulations:

***Citation.***

1. These Regulations may be cited as the European Communities (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations 2007.

***Definitions.***

2. In these Regulations:

“Amendment Regulations” means the European Communities (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations 2003 (S.I. No. 212 of 2003);

“Principal Regulations” means the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2003 (S.I. No. 211 of 2003).

***Commencement Date.***

3. (1) These Regulations come into operation on 19 day of December 2007.

(2) UCITS authorised by the Bank before the 19 day of December 2007 have until the 23rd July 2008 to comply with these Regulations.

***Amendment of Regulation 2(1) of the Principal Regulations.***

4. Regulation 2(1) of the Principal Regulations, as amended by the Amendment Regulations, is further amended by:

*Notice of the making of this Statutory Instrument was published in  
“Iris Oifigiúil” of 4th January, 2008.*

- (a) substituting the following definition for the definition of “money market instruments”:

“ ‘money market instruments’ means—

instruments normally dealt in on the money market which are liquid, and have a value which can be accurately determined at any time. These shall be understood by reference to the following paragraphs 1-12:

1. The reference to money market instruments as instruments shall be understood as a reference to the following:
  - (a) financial instruments which are admitted to trading or dealt in on a regulated market in accordance with subparagraphs (a), (b) and (c) of Regulation 45;
  - (b) financial instruments which are not admitted to trading.
2. The reference to money market instruments as instruments normally dealt in on the money market shall be understood as a reference to financial instruments which fulfil one of the following criteria:
  - (a) they have a maturity at issuance of up to and including 397 days;
  - (b) they have a residual maturity of up to and including 397 days;
  - (c) they undergo regular yield adjustments in line with money market conditions at least every 397 days;
  - (d) their risk profile, including credit and interest rate risks, corresponds to that of financial instruments which have a maturity as referred to in subparagraphs (a) or (b), or are subject to a yield adjustment as referred to in subparagraph (c).
3. The reference to money market instruments as instruments which are liquid shall be understood as a reference to financial instruments which can be sold at limited cost in an adequately short time frame, taking into account the obligation of the UCITS to repurchase or redeem its units at the request of any unit holder.
4. The reference to money market instruments as instruments which have a value which can be accurately determined at any time shall be understood as a reference to financial

instruments for which accurate and reliable valuations systems, which fulfil the following criteria, are available:

- (a) they enable the UCITS to calculate a net asset value in accordance with the value at which the financial instrument held in the portfolio could be exchanged between knowledgeable willing parties in an arm's length transaction;
  - (b) they are based either on market data or on valuation models including systems based on amortised costs.
5. The criteria referred to in paragraphs 3 and 4 shall be presumed to be fulfilled in the case of financial instruments which are normally dealt in on the money market and which are admitted to, or dealt in on, a regulated market in accordance with subparagraphs (a), (b) or (c) of Regulation 45, unless there is information available to the UCITS that would lead to a different determination.
6. The reference in subparagraph (h) of Regulation 45 to money market instruments, other than those dealt in on a regulated market, provided that the issue or the issuer is itself regulated for the purpose of protecting investors and savings, shall be understood as a reference to financial instruments which fulfil the following criteria:
  - (a) they fulfil one of the criteria set out in paragraph 2 and all the criteria set out in paragraphs 3 and 4;
  - (b) appropriate information is available for them, including information which allows an appropriate assessment of the credit risks related to the investment in such instruments, taking into account paragraphs 7, 8 and 9 of this definition; and
  - (c) they are freely transferable.
7. For money market instruments covered by subparagraphs (h)(ii) and (h)(iv) of Regulation 45 or for those which are issued by a local or regional authority of a Member State or by a public international body but are not guaranteed by a Member State or, in the case of a federal State which is a Member State, by one of the members making up the federation, appropriate information as referred to in paragraph 6(b) shall consist in the following:
  - (a) information on both the issue or the issuance programme and the legal and financial situation of the issuer prior to the issue of the money market instrument;

- (b) updates of the information referred to in subparagraph (a) on a regular basis and whenever a significant event occurs;
  - (c) the information referred to in subparagraph (a), verified by appropriately qualified third parties not subject to instructions from the issuer;
  - (d) available and reliable statistics on the issue or the issuance programme.
- 8. For money market instruments covered by subparagraph (h)(iii) of Regulation 45, appropriate information as referred to in paragraph 6(b) shall consist in the following:
  - (a) information on the issue or the issuance programme or on the legal and financial situation of the issuer prior to the issue of the money market instrument;
  - (b) updates of the information referred to in subparagraph (a) on a regular basis and whenever a significant event occurs;
  - (c) available and reliable statistics on the issue or the issuance programme or other data enabling an appropriate assessment of the credit risks related to the investment in such instruments.
- 9. For all money market instruments covered by subparagraph (h)(i) of Regulation 45, except those referred to in paragraph 7 of this definition and those issued by the European Central Bank or by a central bank from a Member State, appropriate information as referred to in paragraph 6(b) shall consist in information on the issue or the issuance programme or on the legal and financial situation of the issuer prior to the issue of the money market instrument.
- 10. The reference in subparagraph (h)(iii) of Regulation 45 to an establishment which is subject to and complies with prudential rules considered by the Bank to be at least as stringent as those laid down in a Community Act shall be understood as a reference to an issuer which is subject to and complies with prudential rules and fulfils one of the following criteria:
  - (a) it is located in the European Economic Area;
  - (b) it is located in the OECD countries belonging to the Group of Ten;
  - (c) it has at least investment grade rating;

(d) it can be demonstrated on the basis of an in-depth analysis of the issuer that the prudential rules applicable to that issuer are at least as stringent as those laid down in a Community Act.

11. The reference in subparagraph (h)(iv) of Regulation 45 to securitisation vehicles shall be understood as a reference to structures, whether in corporate, trust or contractual form, set up for the purpose of securitisation operations.
12. The reference in subparagraph (h)(iv) of Regulation 45 to banking liquidity lines shall be understood as a reference to banking facilities secured by a financial institution which itself complies with subparagraph (h)(iii) of Regulation 45.”;

(b) substituting the following definition for the definition of “transferable securities”:

“ ‘transferable securities’ means—

- shares in companies and other securities equivalent to shares in companies (in these Regulations referred to as ‘shares’),
- bonds and other forms of securitised debt (in these Regulations referred to as ‘debt securities’),
- other negotiable securities which carry the right to acquire any such transferable securities by subscription or exchange,

other than the techniques and instruments referred to in Regulation 48A, and which fulfil the criteria in the following paragraphs 1 and 2:

1. (a) the potential loss which the UCITS may incur with respect to holding those instruments is limited to the amount paid for them;
- (b) their liquidity does not compromise the ability of the UCITS to comply with Regulation 59;
- (c) reliable valuation is available for them as follows:
  - (i) in the case of securities admitted to or dealt in on a regulated market as referred to in subparagraphs (a) to (d) of Regulation 45, in the form of accurate, reliable and regular prices which are either market prices or prices made available by valuation systems independent from issuers;

- (ii) in the case of other securities as referred to in Regulation 46(1), in the form of a valuation on a periodic basis which is derived from information from the issuer of the security or from competent investment research;
- (d) appropriate information is available for them as follows:
- (i) in the case of securities admitted to or dealt in on a regulated market as referred to in subparagraphs (a) to (d) of Regulation 45, in the form of regular, accurate and comprehensive information to the market on the security or, where relevant, on the portfolio of the security;
  - (ii) in the case of other securities as referred to in Regulation 46(1), in the form of regular and accurate information to the UCITS on the security or, where relevant, on the portfolio of the security;
- (e) they are negotiable;
- (f) their acquisition is consistent with the investment objectives or the investment policy, or both, of the UCITS pursuant to these Regulations;
- (g) their risks are adequately captured by the risk management process of the UCITS.
- (h) For the purposes of subparagraphs (b) and (e), and unless there is information available to the UCITS that would lead to a different determination, financial instruments which are admitted or dealt in on a regulated market in accordance with subparagraphs (a), (b) or (c) of Regulation 45 shall be presumed not to compromise the ability of the UCITS to comply with Regulation 59 and shall also be presumed to be negotiable.

2. Transferable securities shall be taken to include the following:

- (a) units in closed-ended funds constituted as investment companies or as unit trusts which fulfil the following criteria:
  - (i) they fulfil the criteria set out in paragraph 1;

- (ii) they are subject to corporate governance mechanisms applied to companies;
  - (iii) where asset management activity is carried out by another entity on behalf of the closed-ended fund, that entity is subject to national regulation for the purpose of investor protection;
- (b) units in closed-ended funds constituted under the law of contract which fulfil the following criteria:
- (i) they fulfil the criteria set out in paragraph 1;
  - (ii) they are subject to corporate governance mechanisms equivalent to those applied to companies as referred to in subparagraph (a)(ii);
  - (iii) they are managed by an entity which is subject to national regulation for the purpose of investor protection;
- (c) financial instruments which fulfil the following criteria:
- (i) they fulfil the criteria set out in paragraph 1;
  - (ii) they are backed by, or linked to the performance of, other assets, which may differ from those referred to in Regulation 45; provided that where a financial instrument covered by this subparagraph contains an embedded derivative component as referred to in Regulation 48B(2)(c), the requirements of Regulations 48A and 48B shall apply to that component.”.

***Amendment of Regulation 45 of the Principal Regulations.***

5. The Principal Regulations, as amended by the Amendment Regulations, are further amended by substituting the following for Regulation 45(g):

“(g) either or both—

- (i) financial derivative instruments, including equivalent cash-settled instruments, dealt in on a regulated market referred to in paragraphs (a), (b) and (c),
- (ii) OTC derivatives,

provided that:

- (I) the underlying assets consist of instruments to which this Regulation refers, including financial instruments having one

or several characteristics of those assets, financial indices, interest rates, foreign exchange rates or currencies, in which the UCITS may invest according to its investment objectives as stated in the trust deed, deed of constitution or memorandum and articles of association and prospectus of the UCITS and excluding derivatives on commodities,

(II) the counterparties to OTC derivative transactions are institutions subject to prudential supervision and belong to categories approved by the Bank, and

(III) the OTC derivatives are subject to reliable and verifiable valuation on a daily basis and can be sold, liquidated or closed by an offsetting transaction at any time at their fair value at the initiative of the UCITS,

— ‘Fair value’ shall be understood as a reference to the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm’s length transaction.

— ‘Reliable and verifiable valuation’ shall be understood as a reference to a valuation, by the UCITS, corresponding to fair value which does not rely only on market quotations by the counterparty and which fulfils the following criteria:

(a) the basis for the valuation is either a reliable up-to-date market value of the instrument, or, if such a value is not available, a pricing model using an adequate recognised methodology;

(b) verification of the valuation is carried out by one of the following:

(i) an appropriate third party which is independent from the counterparty of the OTC-derivative, at an adequate frequency and in such a way that the UCITS is able to check it;

(ii) a unit within the UCITS which is independent from the department in charge of managing the assets and which is adequately equipped for such purpose,

(iii) the instruments referred to in subparagraphs (i) and (ii) include instruments which fulfil the following criteria:

- (I) they allow the transfer of the credit risk of an asset as referred to in sub-subparagraph (I) of those subparagraphs independently from the other risks associated with that asset;
- (II) they do not result in the delivery or in the transfer, including in the form of cash, of assets other than those referred to in Regulations 45 and 46.
- (III) their risks are adequately captured by the risk management process of the UCITS, and by its internal control mechanisms in the case of risks of asymmetry of information between the UCITS and the counterparty to the credit derivative resulting from potential access of the counterparty to non-public information on firms the assets of which are used as underlyings by credit derivatives;”.

***Insertion of new Regulation after Regulation 45 of the Principal Regulations.***

6. The Principal Regulations, as amended by the Amendment Regulations, are further amended by inserting the following Regulation after Regulation 45:

*“Financial Indices*

45A. (1) The reference in subparagraph (g) of Regulation 45 to financial indices shall be understood as a reference to indices which fulfil the following criteria:

- (a) they are sufficiently diversified, in that the following criteria are fulfilled:
  - (i) the index is composed in such a way that price movements or trading activities regarding one component do not unduly influence the performance of the whole index;
  - (ii) where the index is composed of assets referred to in Regulation 45 its composition is at least diversified in accordance with Regulation 49A;
  - (iii) where the index is composed of assets other than those referred to in Regulation 45, it is diversified in a way which is equivalent to that provided for in Regulation 49A;
- (b) they represent an adequate benchmark for the market to which they refer, in that the following criteria are fulfilled:
  - (i) the index measures the performance of a representative group of underlyings in a relevant and appropriate way;

- (ii) the index is revised or rebalanced periodically to ensure that it continues to reflect the markets to which it refers following criteria which are publicly available;
  - (iii) the underlyings are sufficiently liquid, which allows users to replicate the index, if necessary;
- (c) they are published in an appropriate manner, in that the following criteria are fulfilled:
- (i) their publication process relies on sound procedures to collect prices and to calculate and to subsequently publish the index value, including pricing procedures for components where a market price is not available;
  - (ii) material information on matters such as index calculation, rebalancing methodologies, index changes or any operational difficulties in providing timely or accurate information is provided on a wide and timely basis.

(2) Where the composition of assets which are used as underlyings by financial derivatives in accordance with Regulation 45 does not fulfil the criteria set out in paragraph (1) of this Regulation, those financial derivatives shall, where they comply with the criteria set out in Regulation 45(g), be regarded as financial derivatives on a combination of the assets referred to in Regulation 45(g)(ii)(I), excluding financial indices.”.

***Amendment of Regulation 48A of the Principal Regulations.***

7. The Principal Regulations, as amended by the Amendment Regulations, are further amended by inserting the following after Regulation 48A. (2):

“(3) The reference in paragraph (1) to techniques and instruments which relate to transferable securities or money market instruments and which are used for the purpose of efficient portfolio management shall be understood as a reference to techniques and instruments which fulfil the following criteria:

- (a) they are economically appropriate in that they are realised in a cost-effective way;
- (b) they are entered into for one or more of the following specific aims:
  - (i) reduction of risk;
  - (ii) reduction of cost;
  - (iii) generation of additional capital or income for the UCITS with a level of risk which is consistent with the

risk profile of the UCITS and the risk diversification rules laid down in Regulation 49;

and

- (c) their risks are adequately captured by the risk management process of the UCITS.”.

***Amendment of Regulation 48B of the Principal Regulations.***

8. The Principal Regulations, as amended by the Amendment Regulations, are further amended by substituting the following for Regulation 48B(2)(c):

“(c) When a transferable security or money market instrument contains an embedded derivative, the latter must be taken into account when complying with the requirements of this Regulation.

- (i) A transferable security or money market instrument embedding a derivative shall be understood as a reference to financial instruments which fulfil the criteria for transferable securities or money market instruments set out in Regulation 2(1) and which contain a component which fulfils the following criteria:

- (a) by virtue of that component some or all of the cash flows that otherwise would be required by the transferable security or money market instrument which functions as host contract can be modified according to a specified interest rate, financial instrument price, foreign exchange rate, index of prices or rates, credit rating or credit index, or other variable, and therefore vary in a way similar to a stand-alone derivative;

- (b) its economic characteristics and risks are not closely related to the economic characteristics and risks of the host contract;

- (c) it has a significant impact on the risk profile and pricing of the transferable security or money market instrument.

- (ii) A transferable security or a money market instrument shall not be regarded as embedding a derivative where it contains a component which is contractually transferable independently of the transferable security or the money market instrument. Such a component shall be deemed to be a separate financial instrument.”.

***Amendment of Regulation 49A of the Principal Regulations.***

9. The Principal Regulations, as amended by the Amendment Regulations, are further amended by substituting the following for Regulation 49A:

*“Index funds.*

49A. (1) Without prejudice to the limits specified in Regulations 53, 54 and 55, the limit in Regulation 49(1)(a) is raised to 20% for investments in shares or debt securities or both issued by the same body when, according to the trust deed, deed of constitution or articles of incorporation, the aim of the UCITS’ investment policy is to replicate the composition of a certain stock or debt securities index which is recognised by the Bank, on the following basis:

- (a) the index’s composition is sufficiently diversified, which shall be understood as a reference to an index which complies with the risk diversification rules set out in paragraphs (1) and (2);
- (b) the index represents an adequate benchmark for the market to which it refers, which shall be understood as a reference to an index whose provider uses a recognised methodology which generally does not result in the exclusion of a major issuer of the market to which it refers; and
- (c) the index is published in an appropriate manner which shall be understood as a reference to an index which fulfils the following criteria:
  - (i) it is accessible to the public;
  - (ii) the index provider is independent from the index-replicating UCITS.

The provisions of subparagraph (c)(ii) shall not preclude index providers and the UCITS forming part of the same economic group, provided that effective arrangements for the management of conflicts of interest are in place.

(2) The Bank may raise the limit in Regulation 49(1)(a) to a maximum of 35% where that proves to be justified by exceptional market conditions in particular in regulated markets where certain transferable securities or money market instruments are highly dominant. The investment up to this limit is only permitted for a single issuer.

(3) The reference in paragraph (1) to replication of the composition of a stock or debt securities index shall be understood as replication of the composition of the underlying assets of the index, including the use of derivatives or other techniques and instruments as referred to in Regulation 48A.”.



GIVEN under my Official Seal,  
19 December 2007

MICHEÁL MARTIN,  
Minister for Enterprise, Trade and Employment.

EXPLANATORY NOTE

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

These Regulations give effect to EU Directive 2007/16/EC of 19 March 2007 implementing Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards the clarification of certain definitions. These definitions relate to the eligible assets in which UCITS may invest.

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
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