



STATUTORY INSTRUMENTS.

S.I. No. 303 of 2022

EUROPEAN UNION (INVESTMENT FIRMS) (NO. 2) (AMENDMENT)
REGULATIONS 2022

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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 (EU) 2019/2034 of the European Parliament and Council of 27 November 2019¹, hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Union (Investment Firms) (No. 2) (Amendment) Regulations 2022.

Amendment of Central Bank Act 1971

2. The Central Bank Act 1971 (No. 24 of 1971) is amended by the insertion of the following section after section 31Q (as inserted by the European Union (Investment Firms) (Amendment) Regulations 2022):

“Requirement for holders of MiFID authorisation to re-authorise

31R. (1) Subject to subsection (2), an undertaking referred to in point (1)(b) of Article 4(1) of the Capital Requirements Regulation which has been authorised under Part 2 of the Regulations of 2017 shall apply for a Class 1 authorisation or a licence, at the latest on the day when the undertaking satisfies either of the following conditions:

- (a) the average of monthly total assets of the undertaking, calculated over a period of 12 consecutive months, is equal to or exceeds €30,000,000,000;
- (b) the average of monthly total assets of the undertaking, calculated over a period of 12 consecutive months, is less than €30,000,000,000, and the undertaking is part of a group in which the total value of the consolidated assets of all undertakings in the group that individually have total assets of less than €30,000,000,000 and that carry out any of the activities referred to in paragraphs 3 and 6 of Part 1 of Schedule 1 to the Regulations of 2017 is equal to or exceeds

¹ OJ No. L. 314, 05.12.2019, p. 64.

€30,000,000,000, both calculated as an average over a period of 12 consecutive months.

- (2) An undertaking referred to in point (1)(b) of Article 4(1) of the Capital Requirements Regulation that, on 24 December 2019, carried out activities as an investment firm authorised under the Regulations of 2017 shall apply for a Class 1 authorisation or a licence on or before the date that is 180 days from the later of—
 - (a) the date on which the European Union (Investment Firms) (No. 2) (Amendment) Regulations 2022 are made, and
 - (b) the date on which the regulatory technical standards referred to in Article 8a(6) of the Capital Requirements Directive are adopted by the Commission of the European Union.
- (3) Subject to subsection (4), an undertaking referred to in subsection (1) or (2) may continue to carry on the activities referred to in point (1)(b) of Article 4(1) of the Capital Requirements Regulation notwithstanding that neither a Class 1 authorisation nor a licence has been granted to the undertaking.
- (4) Subsection (3) shall cease to apply to an undertaking as follows:
 - (a) where the undertaking concerned has failed to apply for a Class 1 authorisation or a licence in accordance with subsection (1) or (2), as applicable, on and from the date by which an application was required to be made under the subsection concerned;
 - (b) where—
 - (i) either—
 - (I) the application by the undertaking for a licence has been rejected under section 9(1)(b), or
 - (II) the application by the undertaking for a Class 1 authorisation has been rejected under section 31C(2)(b),
 - and
 - (ii) the undertaking has failed to make an appeal before the time limit for the making of an appeal under Part VIIA of the Act of 1942 has expired,

subject to paragraph (f), on the date on which that time limit expires;

- (c) where—
 - (i) the application by the undertaking for a licence has been rejected under section 9(1)(b),
 - (ii) the undertaking has made an appeal under Part VIIA of the Act of 1942, and
 - (iii) the decision on the final determination of the appeal is to uphold the decision of the Bank under section 9(1),
subject to paragraph (f), on the date of the final determination of the appeal;
 - (d) where—
 - (i) the application by the undertaking for a Class 1 authorisation has been rejected under section 31C(2)(b),
 - (ii) the undertaking has made an appeal under Part VIIA of the Act of 1942, and
 - (iii) the decision on the final determination of the appeal is to uphold the decision of the Bank under section 31C(2),
subject to paragraph (f), on the date of the final determination of the appeal;
 - (e) where the ECB has objected to a draft decision to propose to it to grant a Class 1 authorisation or a licence to the undertaking, subject to paragraph (f), on the date on which the undertaking is notified of that objection;
 - (f) where the Bank determines that the application of paragraph (b), (c), (d) or (e) would result in a detriment to—
 - (i) investors, or
 - (ii) the proper and orderly regulation and supervision of investment firms,
on the date, notified in writing to the undertaking concerned, which the Bank considers appropriate in order to allow the undertaking sufficient time to cease to carry on the activities referred to in point (1)(b) of Article 4(1) of the Capital Requirements Regulation in such a manner as to avoid any such detriment arising.
- (5) Where the Bank, after receiving information in accordance with Article 95a of the Markets in Financial Instruments Directive, determines that an undertaking is required to apply for a Class 1 authorisation or a licence

in accordance with subsection (1) or (2), it shall notify the undertaking and shall, where the Bank is not the competent authority for the purposes of that Directive, take over the authorisation procedure from the date of that notification.

- (6) Where a holder of an authorisation granted under the Regulations of 2017 applies to the Bank for a Class 1 authorisation, the Bank shall, in determining whether the conditions referred to in sections 31D to 31G have been complied with, take into account information received by the Bank in relation to the application by the holder for authorisation under the Regulations of 2017 insofar as such information is relevant to the application for a Class 1 authorisation.
- (7) Where a holder of an authorisation granted under the Regulations of 2017 applies to the Bank for a licence, the Bank shall, in determining whether the conditions referred to in sections 9D to 9G have been complied with, take into account information received by the Bank in relation to the application by the holder for authorisation under the Regulations of 2017 insofar as such information is relevant to the application for a licence.
- (8) Where a holder of an authorisation granted under the Regulations of 2017 applies for a credit institution authorisation under the SSM Regulation in another Member State, the Bank shall, upon request, disclose to the competent authority in that Member State and the ECB information received by the Bank in relation to the application by the holder for authorisation under the Regulations of 2017.”.

Amendment of European Union (Investment Firms) Regulations 2021

3. The European Union (Investment Firms) Regulations 2021 (S.I. No. 355 of 2021) are amended, in Regulation 36(1), by the substitution of “Regulation 35(1)(a)” for “Regulation 35(2)(a)”.

GIVEN under my Official Seal,
27 June, 2022.

PASCHAL DONOHOE,
Minister for Finance.

L.S.

EXPLANATORY NOTE

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

These Regulations amend the Central Bank Act 1971 (No. 24 of 1971) to provide for undertakings referred to in point (1)(b) of Article 4(1) of the Capital Requirements Regulation, which have been authorised under Part 2 of the European Union (Markets in Financial Instruments) Regulations 2017 (S.I. No. 375 of 2017), to apply for re-authorisation as a credit institution, as required by Directive (EU) 2019/2034 of the European Parliament and Council of 27 November 2019, and sets out certain requirements for the Central Bank of Ireland in relation to such applications. In addition, these Regulations amend the European Union (Investment Firms) Regulations 2021 (S.I. No. 355 of 2021) to update internal referencing.

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