Financial Transactions of Certain Companies and Other Bodies Act, 1992

Requirements of the Minister for Finance

The Financial Transactions of Certain Companies and Other Bodies Act, 1992 **("the Act")** provides that the exercise by State bodies of the power to effect the contracts to which the Act refers, is subject to Requirements specified by the Minister for Finance.

The following Requirements are issued under Section 2(2) (a) of the Act and supersede all previous Requirements and guidelines. These Requirements are to be read in conjunction with the "Specification of the Minister for Finance" **("a Specification")** issued from time to time to each of the State bodies concerned. The Minister for Finance reserves the right to alter these Requirements at any time or to alter or withdraw a Specification issued by him under the Act.

Board Responsibilities

Subject to these Requirements and any other conditions which may be laid down by the Minister for Finance, it shall be the responsibility of the Board of a State body, to which a Specification relates, to draw up written policies in respect of that body's use of each type of instrument specified by the Minister for Finance in respect of it. These policies should take account of existing Board policies in relation to currency and interest rate exposures including, where appropriate, the target fixed/floating interest rate structure of borrowings, the currency distribution of debt and foreign currency transaction exposures and must stipulate:

- the decision framework,

- criteria with regard to exposure limits,

-Where a State body plans to use a derivative in order to create a fixed interest rate borrowing instrument from a floating interest rate borrowing instrument in any currency, it should ensure that such final fixed interest rate, taking into account any margins, does not exceed 150 basis points over the relevant Irish Government bond or such other maximum rate as may from time to time be approved by the Minister.

- the individuals authorised to undertake transactions and terms and conditions attaching to various levels of authorisation,

- procedures for assessing counterparty creditworthiness,

- specific criteria with regard to counterparty credit-risk including a schedule setting out the details of each authorised counterparty, the authorised overall level of exposure to each such counterparty in both monetary and percentage terms and collateral arrangements where appropriate, and

- the procedures (including systems design, separation of duties, staff levels, and frequency) for undertaking, recording, confirming, and monitoring transactions and limits

- all other arrangements and procedures necessary to ensure compliance with best treasury practice.

A copy of the formal resolution of the Board adopting the policies shall be provided to the Minister for Finance.

It shall also be the responsibility of the Board to ensure that the contracts of a State body are entered into only for the purposes set out in Section 2(1) of the Act and are subject to and in compliance with its Specification and the policies established by the Board. The Board shall take whatever steps and put in place whatever procedures are necessary for the purposes of discharging its obligations in this regard. The Board shall certify annually that such procedures are in place and that the body has acted fully in accordance with the Specification.

(1) A State body shall not engage in contracts governed by the Act in the absence of a Specification.

(2) A State body shall not engage in exotic derivatives - e.g. contracts which have embedded options, which comprise a combination of derivatives or which are leveraged - without the separate express consent of the Minister, save where the particular type of contract is included in its Specification.

(3) A State body may only enter into contracts which are specifically designed to hedge transactions carried out or exposures incurred or reasonably expected to be incurred in the normal course of their business. **No State body shall enter into a contract which is speculative in nature.**

(4) Contracts specified by the Minister shall be construed in accordance with the definitions set out in Annex 1 of these Requirements as these may be further detailed or clarified by the International Swaps and Derivatives Association, Inc in its officially published documentation.

(5) A contract entered into by a State body for the purposes of hedging an exposure must have an identifiable and related asset, liability, or commitment which may include such assets, liabilities or commitments as the body may reasonably expect to arise in the future.

(6) A hedging instrument must not exceed the amount or maturity of the underlying asset, liability or, commitment, save where such excess is required by virtue of non-standard maturities or amounts and is limited to the absolute minimum required to achieve the requisite hedge.

(7) If a hedging instrument has been purchased or sold in anticipation of an asset, liability or commitment expected by the State body to arise in the future, and the State body ceases to expect such asset, liability or commitment to arise, then the State body must immediately commence putting in place orderly arrangements for the unwinding of the exposure taking into account the circumstances of each case.

(8) A Specification shall only apply to the State body and the authorised subsidiaries named therein.

(9) Authority to engage in such contracts as may be included in a Specification cannot be delegated to any third party, other than an authorised subsidiary, without the separate express consent of the Minister for Finance.

(10) No State body shall act as an intermediary for any other body (with the exception of its own subsidiaries) in respect of the contracts to which the Act refers. [This prohibition shall not prevent a State body from undertaking any intermediary function provided for by the rules of the SEM or I-SEM only].

(11) A State body shall not enter into a contract with any counterparty unless, in the first instance, it has supplied such counterparty with a copy of its Specification and a copy of these Requirements.

(12) A State body should not rely on the advice of a counterparty or a trader in derivatives unless the counterparty or trader gives an enforceable undertaking that s/he is acting as an advisor rather than as a trader.

(13) Except as may be provided in a Specification, contracts may not be entered into with any person or body which does not at a minimum satisfy one of the following criteria, without the express consent of the Minister:-

(a) Banks or corporations with a long-term credit rating of at least AA- (Standard and Poor) or Aa3 (Moody's) or equivalent;

(b) (i) a person or body who is a holder of a banking licence issued under Section 9 of the Central Bank Act, 1971; - or
(ii) a person or body included in the Central Bank of Ireland’s list of credit institutions authorised to carry on banking business in Ireland under EU Directive (2013/36/EU), with total balance sheet assets of not less than €2,000 million equivalent; or
(iii) a person or body whose parent bank, where such person or body is a branch or a subsidiary of such parent, has total balance sheet assets of not less than €20,000 million equivalent and a credit rating of at least A-/A3;

(c) Subsidiaries or branches of international banks, operating in Ireland or included in the Central Bank of Ireland’s list of credit institutions authorised to carry on banking business in Ireland under EU Directive (2013/36/EU), provided that the parent bank meets the criteria at 13 (a) or has total balance sheet assets of not less than €20,000 million equivalent and a credit rating of at least A-/A3;

(d) State bodies covered by the Act who hold a Specification from the Minister for Finance in respect of the particular contract;

(e) The National Treasury Management Agency.

(f) Solely in respect of short-term contracts (i.e. contracts with a maturity of less than 12 months), Banks or corporations with a short-term credit rating of A-1 (Standard and Poor) or P-1 (Moody's) or equivalent at the date on which the contract was entered into or rolled over, as the case may be;

(g) Entities which provide an irrevocable guarantee or other form of collateral to the State body that represents credit support for an amount of the State body’s counterparty credit risk exposure to such entity under that particular contract that is typical in the relevant market and where any guarantor or other third-party provider of the other form of collateral meets at least one of the criteria 13 (a) to 13 (f) above.

(14) All contracts must be confirmed in writing, (which shall include fax and electronic means and any other accepted means of recording and documenting transactions which is commonly used in the market place for this purpose), using a standard form of contract employed by financial institutions generally for such contracts.

(15) Swap documentation should be based on one of the standard forms published by the International Swaps and Derivatives Association Inc or, in the case of commodity or energy trading contracts or in the case of contracts transacted in accordance with paragraph (16) below, based on such format as may be used and accepted in the relevant market, from time to time, and considered by the State body to be appropriate.

(16) Futures contracts must be transacted on an internationally recognised futures exchange.

(17) As far as is practicable, no contract or its associated documentation, should involve a State body making representations, entering into covenants, agreeing to events of default, or assuming any other conditions or obligations which are more onerous or less favourable than those being agreed by the counterparty.

(18) No contracts may be entered into which would have the effect of altering any term, condition or covenant of an original loan agreement or, where applicable, any Ministerial guarantee thereunder without the consent of the Minister for Finance, and of the relevant Minister, where appropriate.

(19) Derivative contracts entered into by a State body are to be reported in the annual accounts of the State body in accordance with international accounting standards.

(20) Default by any counterparty or the enforced unwinding of any particular contract, irrespective of whether it is replaced with another contract, shall be reported to the Department of Finance immediately such an event occurs.

(21) A State body shall comply with any other request for information which may be made by the Minister for Finance from time to time.

Department of Finance
08 December 2017

Derivative Product Definitions **Annex 1**

Interest Rate Swaps	An agreement between two parties to exchange two different interest rate payment streams (typically a fixed for a floating or vice versa) and a notional principal over a fixed term.
FX Swaps	An agreement between two parties to exchange two amounts or payment streams denominated in different currencies over a fixed term.
FX Interest Rate Swaps	A combination of a currency and interest rate swap where one party will exchange a fixed or floating rate obligation in one currency for a fixed or floating rate obligation in another. Often referred to as a *cross-currency interest rate swap.*
Commodity Swaps	An agreement between two parties to exchange two payment streams (fixed for floating or vice versa) for a fixed amount of a commodity over a fixed term (often simply a paper transaction with no actual commodity physically changing hands).
FX Forward	A FX Forward is a contractual agreement to exchange a defined amount of two currencies at an agreed rate at some agreed future date.
FX Futures	Agreement to buy or sell a standard quantity of currency (e.g. €/US$) at a future date at an agreed price. Similar to an FX forward but involves standard amounts traded for standard period on an exchange.
Commodity Forward	A Commodity Forward is a contractual agreement to buy or sell a specific quantity of a commodity (e.g. Oil/Copper/Silver/Orange Juice etc) at an agreed price at some agreed future date.
Commodity Futures	Agreement to buy or sell a standard quantity of a commodity (e.g. Oil/Copper/Silver/Orange Juice etc) at a future date at an agreed price. Similar to an commodity forward but involves standard amounts traded for standard periods on a futures exchange
Forward Forward	This is an agreement with the Bank to fix the interest rate on a deposit or loan for a future period commencing on a future date.
Forward Rate Agreement (FRA)	A FRA is an agreement to fix the interest rate on a notional fixed amount for a specified period from an agreed future date e.g. Fixed rate starting in 3 months and running for six months. The FRA, while similar to a "Forward Forward", is independent of the underlying asset or liability and the principal does not change hands
Interest Rate Futures	Agreement to fix the interest rate on a standard amount of principal at a future date for a standard period at an agreed price.
FX Options	The purchase or sale of the right but not the obligation to exchange (buy or sell) an agreed amount of currency at an agreed price (the strike rate) on or up to a set date in the future.
Interest Rate Options	The purchase or sale of the right but not the obligation to enter into a fixed interest rate at or up to a set date in the future.
Commodity Options	The purchase or sale of the right but not the obligation to exchange (buy or sell) whether by means of Physical delivery or by financial settlement an agreed amount of a particular

	commodity at an agreed price (the strike rate) on or up to a set date in the future.
Swaptions	The purchase or sale of the right but not the obligation to enter into a swap agreement on predetermined terms at or up to a set date in the future.
Cylinders	A cylinder option involves both the purchase of a put option and sale of a call option such that purchaser limits the impact of rates moving against him while selling off some of the potential upside in order to reduce the option premium costs.
Caps	A cap enables a borrower set a maximum interest rate on a loan for payment of an up-front premium.
Floors	A floor enables a depositor set a minimum interest rate on a deposit for payment of an up-front premium.
Collars	A collar involves the purchase of a cap and the sale of a floor which has the effect of setting an interest rate range. Similar to a cylinder but involving interest rather than FX rates.
Energy Trading Contract (Cash Settled)	A Cash settled contract (including 1 way or 2 way financial contracts for differences) designed to reduce or eliminate the risk of loss arising from changes to wholesale energy market prices and/or components of those prices, or from changes to the price of instruments in connection with schemes and mechanisms for the promotion or facilitation of particular forms of energy, or of energy system capacity, availability or interconnection (whether in the form of obligations, certificates, facilities, permits, allowances, transmission rights financial penalties or any other form), including but not limited to SEM financial contracts for difference. Where SEM means the Single Electricity Market as described in section 2 of the Electricity Regulation Act 1999 (as such may be amended, modified, replaced, re-enacted or consolidated) and has during the interim period (as defined in section 7 of the Energy Act 2016), the meaning given to the term "revised arrangements in the State and Northern Ireland" in that section 7."
Index Linked Interest Rate Swap	An index-related swap where one party pays a fixed rate on an indexed principal amount, while the other party pays a fixed or floating rate on a notional (static) principal. The index is commonly a national inflation index.