SUBSIDIARY LEGISLATION 345.21

DATA REPORTING SERVICES REGULATIONS

3rd January, 2018

LEGAL NOTICE 391 of 2017, as amended by Legal Notices 136 of 2022 and 255 of 2024.

Title, scope. *Amended by: L.N. 136 of 2022; L.N. 255 of 2024.*

1. (1) The title of these regulations is the Data Reporting Services Regulations.

(2) The purpose of these regulations is to implement sub-paragraphs (34), (35), (36), (36a) of Article 2(1), Article 27c, Article 27g, Article 27h and Article 27i of MiFIR, and the relevant provisions of Article 4 and Articles 59 to 66 of MiFID.

Definitions. *Amended by: L.N. 136 of 2022; L.N. 255 of 2024.*

2. (1) In these regulations unless the context otherwise requires:

Cap. 345. Cap. 370

"the Acts" means the Financial Markets Act and the Investment Services Act;

"APA" means a person authorised under MiFIR to provide the service of publishing trade reports on behalf of investment firms pursuant to Articles 20 and 21 of MiFIR;

"approved reporting mechanism" or "ARM" means a person authorised under MiFIR to provide the service of reporting details of transactions to competent authorities or to ESMA on behalf of investment firms;

"consolidated tape provider" or "CTP" means a person authorised under MiFIR to provide the service of collecting trade reports for financial instruments listed in Articles 6, 7, 10, 12 and 13, 20 and 21 of MiFIR from regulated markets, MTFs, OTFs and APAs and consolidating them into a continuous electronic live data stream providing price and volume data per financial instrument;

"data reporting services provider" means an APA, CTP or ARM and a person referred to in Article 27b(2) of MiFIR;

"DORA Regulation" means Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No 909/2014 and (EU) 2016/1011, as amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been or may be issued thereunder;

"ESMA " means the European Securities and Markets Authority established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010;

"investment firm" means any person, other than persons to

whom MiFID does not apply in terms of Article 2 of the said Directive, whose regular occupation or business is the provision of any one or more investment services to third parties on a professional basis;

"MiFID" means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments as amended from time to time and includes any implementing measures that may have been or may be issued thereunder;

"MiFIR" means Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments as amended from time to time;

(2) Words and expressions used in the Acts shall, in these regulations, have the same meaning as is assigned to them in the Acts.

Competent authority. *Added by: L.N. 136 of 2022.* Cap. 330.

2A. (1) The Malta Financial Services Authority established by the Malta Financial Services Authority Act shall be the designated competent authority in Malta responsible for the authorisation and supervision of APAs and ARMs which have a derogation in accordance with Article 2(3) of MiFIR.

(2) The competent authority shall exercise all the functions, obligations and powers and shall satisfy all the requirements imposed on competent authorities by MiFIR and MIFID.

(3) Without prejudice to sub-regulation (2), the competent authority may, for the better implementation of MiFIR, exercise any of the powers assigned to it under the Act in relation to persons acting as data reporting services providers.

Authorisation procedures for data reporting services providers

Requirement for authorisation. *Substituted by: L.N. 136 of 2022.*

3. (1) No person shall operate an APA, a CTP or an ARM in or from Malta, or hold itself out to be or provide the services of an APA, a CTP or an ARM, unless such person has received prior authorisation in accordance with Article 27b of MiFIR.

(2) A person seeking to operate an APA or an ARM which has a derogation in accordance with Article 2(3) of MiFIR in or from Malta shall require prior authorisation for this purpose. The authorisation shall be issued by the competent authority in terms of these regulations and Article 27b of MiFIR.

(3) An application for authorisation to operate an APA or an ARM which has a derogation in accordance with Article 2(3) of MiFIR in terms of sub-regulation (2) shall be made to the competent authority in writing and shall be accompanied by such documents as the competent authority may specify.

(4) An APA or an ARM which has a derogation in accordance with Article 2(3) of MiFIR shall be authorised by the competent authority in terms of sub-regulation (2) where:

(a) the data reporting services provider is a legal person established in the Union; and

(b) the data reporting services provider meets the requirements laid down in Title IVa of MiFIR:

Provided that the competent authority shall not issue an authorisation unless it is satisfied that the applicant is in a position to comply with any conditions for authorisation set out in Title IVa of MiFIR which the competent authority may deem fit to impose.

(5) Notwithstanding the provisions of sub-regulation (2), the competent authority shall allow an investment firm or a market operator operating a trading venue to operate the data reporting services of an APA or an ARM which has a derogation in accordance with Article 2(3) of MiFIR subject to the prior verification of their compliance with the provisions of Title IVa of MiFIR. This service shall be included in their licence..

Withdrawal of authorisation. *Substituted by: L.N. 136 of 2022.*

4. The competent authority may withdraw the authorisation of an APA or an ARM with a derogation in accordance with Article 2(3) of MIFIR, where such APA or ARM:

(a) does not make use of the authorisation within twelve months from the date when authorisation was granted, expressly renounces the authorisation or has provided no services for the preceding six months;

(b) obtained the authorisation by making false statements or by any other irregular means;

(c) no longer meets the conditions under which it was authorised; or

(d) has seriously and systematically infringed any applicable provision set out in MiFIR.

Power of competent court to make rules. *Substituted by: L.N. 136 of 2022.*

5. For the better carrying out of the provisions of MiFIR and of these regulations, the competent authority may, from time to time, issue and publish rules which shall be binding on all persons acting as data reporting services providers. Such rules may lay down additional requirements and conditions in relation to these matters as the competent authority may consider appropriate, including:

(a) the operation of Title VIa of MiFIR, any provision dealing with data reporting services providers in MiFID, or of these regulations;

(b) any matter relating to the functions, obligations and powers of the competent authority under Title VIa of MiFIR and any provision dealing with data reporting services providers in MiFID; and

(c) any other matter arising in connection with data reporting services providers.

Applicability of Title IVa of MiFIR to data reporting services providers. *Substituted by: L.N. 136 of 2022.*

6. The provisions of Title IVa of MiFIR shall apply to persons acting as data reporting services providers in or from Malta and such persons shall exercise all the obligations and satisfy all the requirements imposed on such persons by the said provisions of Title IVa of MiFIR.

MiFIR to prevail in case of any inconsistency. *Substituted by: L.N. 136 of 2022.*

7. Upon the coming into force of Title IVa of MiFIR, these regulations shall be construed and applied in accordance therewith and, insofar as the provisions of these regulations are inconsistent with the provisions of the said MiFIR, the provisions of MiFIR shall prevail and the provisions of these regulations shall not apply to the extent of the inconsistency.

Organisational requirements for APAs. *Amended by: L.N. 255 of 2024.*

8. (1) An APA shall have adequate policies and arrangements in place to make public the information required under Articles 20 and 21 of MiFIR as close to real time as is technically possible, on a reasonable commercial basis. The information shall be made available free of charge 15 minutes after the APA has published it.

(2) The APA must be able to efficiently and consistently disseminate the information referred to in sub-regulation (1) in a way that ensures fast access to the information, on a non-discriminatory basis and in a format that facilitates the consolidation of the information with similar data from other sources.

(3) The information made public by an APA in accordance with sub-regulations (1) and (2) shall include, at least, the following details:

(a) the identifier of the financial instrument;

(b) the price at which the transaction was concluded;

(c) the volume of the transaction;

(d) the time of the transaction;

(e) the time the transaction was reported;

(f) the price notation of the transaction;

(g) the code for the trading venue the transaction was executed on, or where the transaction was executed via a systematic internaliser the code 'SI' or otherwise the code 'OTC';

(h) if applicable, an indicator that the transaction was subject to specific conditions.

(4) The APA shall operate and maintain effective administrative arrangements designed to prevent conflicts of interest with its clients. In particular, an APA who is also a market operator or investment firm shall treat all information collected in a non-discriminatory fashion and shall operate and maintain appropriate

arrangements to separate different business functions.

(5) An APA shall comply with the requirements concerning the security of network and information systems set out in the DORA Regulation.

(6) The APA shall have systems in place that can effectively check trade reports for completeness, identify omissions and obvious errors and request re-transmission of any such erroneous reports.

Organisational requirements for CTPs.
Amended by: L.N. 255 of 2024.

9. (1) A CTP shall have adequate policies and arrangements in place to collect the information made public in accordance with Articles 6 and 20 of MiFIR, consolidate it into a continuous electronic data stream and make the information available to the public as close to real time as is technically possible, on a reasonable commercial basis.

(2) The information referred to in sub-regulation (1) shall include, at least, the following details:

(a) the identifier of the financial instrument;

(b) the price at which the transaction was concluded;

(c) the volume of the transaction;

(d) the time of the transaction;

(e) the time the transaction was reported;

(f) the price notation of the transaction;

(g) the code for the trading venue the transaction was executed on, or where the transaction was executed via a systematic internaliser the code 'SI' or otherwise the code 'OTC';

(h) where applicable, the fact that a computer algorithm within the investment firm was responsible for the investment decision and the execution of the transaction;

(i) if applicable, an indicator that the transaction was subject to specific conditions;

(j) if the obligation to make public the information referred to in Article 3(1) of MiFIR was waived in accordance with point (a) or (b) of Article 4(1) of that Regulation, a flag to indicate which of those waivers the transaction was subject to.

(3) The information referred to in sub-regulation (1) shall be made available free of charge 15 minutes after the CTP has published it. The CTP shall be able to efficiently and consistently disseminate such information in a way that ensures fast access to the information, on a non-discriminatory basis and in formats that are easily accessible and utilisable for market participants.

(4) A CTP shall have adequate policies and arrangements in place to collect the information made public in accordance with Articles 10 and 21 of MiFIR, consolidate it into a continuous electronic data stream and make following information available to the public as close to real time as is technically possible, on a reasonable commercial basis including, at least, the following details:

(a) the identifier or identifying features of the financial instrument;

(b) the price at which the transaction was concluded;

(c) the volume of the transaction;

(d) the time of the transaction;

(e) the time the transaction was reported;

(f) the price notation of the transaction;

(g) the code for the trading venue the transaction was executed on, or where the transaction was executed via a systematic internaliser the code 'SI' or otherwise the code 'OTC';

(h) if applicable, an indicator that the transaction was subject to specific conditions.

(5) The information referred to in sub-regulation (4) shall be made available free of charge 15 minutes after the CTP has published it. The CTP shall be able to efficiently and consistently disseminate such information in a way that ensures fast access to the information, on a non-discriminatory basis and in generally accepted formats that are interoperable and easily accessible and utilisable for market participants.

(6) The CTP shall ensure that the data provided is consolidated from all the regulated markets, MTFs, OTFs and APAs and for the financial instruments as specified by regulatory technical standards issued pursuant to Article 65(8)(c) of MiFID.

(7) The CTP shall operate and maintain effective administrative arrangements designed to prevent conflicts of interest. In particular, a market operator or an APA, who also operate a consolidated tape, shall treat all information collected in a non-discriminatory fashion and shall operate and maintain appropriate arrangements to separate different business functions.

(8) A CTP shall comply with the requirements concerning the security of network and information systems established in the DORA Regulation.

Organisational requirements for ARMs.
Amended by: L.N. 255 of 2024.

10. (1) An ARM shall have adequate policies and arrangements in place to report the information required under Article 26 of MiFIR as quickly as possible, and no later than the close of the working day following the day upon which the transaction took place. Such information shall be reported in accordance with the requirements laid down in Article 26 of MiFIR.

(2) An ARM shall operate and maintain effective administrative arrangements designed to prevent conflicts of interest with its clients. In particular, an ARM that is also a market operator or investment firm shall treat all information collected in a non-discriminatory fashion and shall operate and maintain appropriate arrangements to separate different business functions.

(3) An ARM shall comply with the requirements concerning the security of network and information systems set out in the DORA Regulation.

(4) The ARM shall have systems in place that can effectively check transaction reports for completeness, identify omissions and obvious errors caused by the investment firm and where such error or omission occurs, to communicate details of the error or omission to the investment firm and request re-transmission of any such erroneous reports.

(5) The ARM shall also have systems in place to enable the ARM to detect errors or omissions caused by the ARM itself and to enable the ARM to correct and transmit, or re-transmit as the case may be, correct and complete transaction reports to the competent authority.

Administrative Penalties, other administrative measures and Appeals.

11. (1) Where a person falling within the scope of these regulations fails to comply with any provisions of such regulations or any rules issued thereunder further implementing such regulations, the competent authority may, by notice in writing and without recourse to a court hearing, impose on such person an administrative penalty and other administrative measures in accordance with the provisions of the Financial Markets Act (MiFID and MiFIR Administrative Penalties, Measures and Investigatory Powers) Regulations, 2017 or the Investment Services Act and Banking Act (MiFID and MiFIR Administrative Penalties, Measures and Investigatory Powers) Regulations, 2017.

L.N. 392.

L.N. 401.