

SUBSIDIARY LEGISLATION 370.10**EUROPEAN PASSPORT RIGHTS FOR
INVESTMENT FIRMS REGULATIONS**

1st November, 2007

LEGAL NOTICE 325 of 2007, as amended by Legal Notices 251 of 2008, 174 of 2012, 397 of 2017, 243 of 2019 and 145 of 2023.

1. (1) The title of these regulations is the European Passport Rights for Investment Firms Regulations.

Citation and
objective.
Amended by:
L.N. 174 of 2012;
L.N. 397 of 2017.

(2) The objective of these regulations is to implement Article 4(1) paragraph (30), Articles 34(1)–(5), 35(1)–(10), 85 and 86(1), (2) and (4) of MiFID, as herein defined, and they shall be interpreted and applied accordingly. The purpose of the amendments introduced by Legal Notice 174 of 2002 is to transpose Article 6(27)(a) and (b) of Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).

2. In these regulations, unless the context otherwise requires -
"the Act" means the Investment Services Act;

Interpretation.
Amended by:
L.N. 174 of 2012;
L.N. 397 of 2017;
L.N. 243 of 2019;
L.N. 145 of 2023.
Cap. 370.

"ancillary service" means any of the services listed within the Third Schedule to the Act;

Substituted by:
L.N. 397 of 2017.

"branch" means a place of business, other than the head office, which is a part of the investment firm, and which has no legal personality and which provides investment services and which may also perform ancillary services for which the investment firm has been authorised; all the places of business set up in the same Member State or EEA State by an investment firm with headquarters in another Member State or EEA State shall be regarded as a single branch;

Amended by:
L.N. 397 of 2017.

"the competent authority" means the Malta Financial Services Authority established by the Malta Financial Services Authority Act;

Amended by:
L.N. 397 of 2017.

"Conduct of Business Rules" refers to Rules issued by the competent authority under various articles of the Act;

Added by:
L.N. 397 of 2017.

"core investment service" means a service listed in Section A of the Annex to "MiFID", incorporated in Schedule 1 to these regulations;

Amended by:
L.N. 397 of 2017.

"ESMA" means the European Securities and Markets Authority;

Added by:
L.N. 397 of 2017.

Added by: "European credit institution" shall have the same meaning
L.N. 397 of 2017. assigned to it by regulation 2 of the European Passport Rights for
S.L. 371.11. Credit Institutions Regulations;

"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;

Amended by: "European investment firm" means an investment firm as defined
L.N. 397 of 2017. in article 4(1) of MiFID authorised by its European regulatory authority within the meaning of article 5 of MiFID or authorised by a European regulatory authority in an EEA State;

"European right" means the entitlement of a person to establish a branch, or provide services, in a Member State or EEA State other than that in which it has its head office -

(a) in accordance with the Treaty as applied in the Member State or EEA State; and

Substituted by: (b) subject to the requirements of MIFID and subject to any
L.N. 397 of 2017. regulations made under the Act and, or Investment Services Rules and, or Conduct of Business Rules issued by the competent authority in terms of article 6 of the Act, implementing such requirements as may be applicable.

"home Member State or EEA State" means:

(a) where the European investment firm is a natural person, the Member State or EEA State in which the head office of that person is situated; or

(b) where the European investment firm is a legal person, the Member State or EEA State in which its registered office is situated or, if under its national law it has no registered office, the Member State or EEA State in which its head office is situated;

"host Member State or EEA State" means the Member State or EEA State where a Maltese investment firm exercises or proposes to exercise European rights;

Amended by: "investment firm" means any person, other than persons to whom
L.N. 397 of 2017. MiFID does not apply in terms of Article 2 of the said MiFID listed in Schedule 2 to these regulations, whose regular occupation or business is the provision of any one or more core investment services to third parties on a professional basis;

"Investment Services Rules" means the rules issued by the competent authority in terms of article 6 of the Act;

"Maltese investment firm" means a person licensed in terms of the Act, whose head office is in Malta and who is entitled to carry on an activity in a Member State or EEA State other than Malta in exercise of a European right;

Added by: "MiFID" means Directive 2014/65/EU of the European
L.N. 397 of 2017. Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, as amended from time to time, and includes any implementing measures that have been or may be issued

thereunder;

"Regulation (EU) No 600/2014" means Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, as amended from time to time;

*Added by:
L.N. 397 of 2017.*

"Regulation (EU) No 1095/2010" means Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC, as amended from time to time;

*Added by:
L.N. 397 of 2017.*

"MiFID Directive" means Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

*Added by:
L.N. 397 of 2017.*

"tied agent" shall have the same meaning as that assigned to it in regulation 2 of the Investment Services (Tied Agents) Regulations;

S.L. 370.14

"the Treaty" means Treaty of Rome signed in 1957, establishing the European Economic Community as subsequently amended.

(2) Words and expressions which are also used in the Act shall have the same meaning as in the Act.

Part I - Exercise of Passport Rights by European investment firms

3. (1) A European investment firm which is seeking to provide investment services and, or activities as well as ancillary services in Malta, either through the establishment of a branch in Malta in exercise of its European right or by the use of a tied agent established in Malta, shall satisfy the conditions prescribed in sub-regulation (2) and shall thereafter be exempt from the requirements prescribed in article 3 of the Act:

*Exercise of
passport rights by
European
investment firms -
establishment.
Amended by:
L.N. 397 of 2017.*

Provided that the European investment firm shall be exempt from the provisions of article 3 of the Act if those investment services are covered by the authorisation granted to the investment firm in the home Member State or EEA State;

Provided further that ancillary services may only be provided together with an investment service.

(2) The establishment conditions for the purposes of this regulation are that -

(a) the European investment firm has communicated its European regulatory authority:

(i) the fact that it intends to establish a branch in Malta or that it has not established a branch in

*Amended by:
L.N. 397 of 2017.*

- Malta but plans to use tied agents established in Malta;
- (ii) a programme of operations setting out *inter alia* the investment services as well as the ancillary services to be offered;
- Substituted by:
L.N. 397 of 2017.* (iii) where established the organizational structure of the branch and indicating whether the branch intends to use tied agents and the identity of those tied agents;
- Added by:
L.N. 397 of 2017.* (iv) where tied agents are to be used and the investment firm has not established a branch in Malta, a description of the intended use of the tied agents and an organisational structure including reporting lines, indicating how the agents fit into the corporate structure of the investment firm;
- Renumbered by:
L.N. 397 of 2017.* (v) the address in Malta from where documents may be obtained;
- Renumbered by:
L.N. 397 of 2017.
Amended by:
L.N. 397 of 2017.* (vi) the names of those responsible for the management of the branch or of the tied agent;
- (b) the competent authority has received, from the European regulatory authority of the European investment firm:
- (i) the information which the European investment firm had provided to it in terms of paragraph (a);
- (ii) details of the accredited compensation scheme of which the European investment firm is a member in accordance with Directive 97/9/EC:
Provided that in the event of change in the particulars, the competent authority shall receive notification thereof from the European regulatory authority of the European investment firm.
- (3) A branch of a European investment firm shall not commence business unless -
- (a) it has been informed by the competent authority that it may commence business; or
- (b) two months have elapsed from the date of transmission by the European regulatory authority of the information it received from the European investment firm in terms of subregulation (2).
- Amended by:
L.N. 397 of 2017* (4) Where the European investment firm appoints tied agents established in Malta, such tied agents shall be assimilated to the branch which the European investment firm establishes in Malta and shall be subject to the Investment Services Rules, Conduct of Business Rules and regulations relating to branches.
- Added by:
L.N. 397 of 2017.* (5) The provisions of this regulation shall also apply, *mutatis mutandis*, to credit institutions authorised in another Member State or EEA State wishing to provide investment services as well as ancillary services through tied agents in accordance with Article 35(7) of

MiFID, and accordingly references in this regulation to a "European investment firm" shall be deemed to include references to a "European credit institution"

4. (1) A European investment firm which is seeking to provide services and, or perform investment services as well as ancillary services in Malta in exercise of a European right shall satisfy the service conditions specified in subregulation (2) and shall be exempt from the provisions of article 3 of the Act:

Exercise of passport rights by European investment firms - services.
Amended by:
L.N. 397 of 2017

Provided that ancillary services may only be provided together with an investment service.

(2) The service conditions for the purposes of this regulation are that:

- (a) the European investment firm has communicated to its European regulatory authority:
 - (i) its intention to provide services in Malta;
 - (ii) a programme of operations stating in particular the investment services as well as ancillary services which it intends to provide in Malta and whether it intends to do so through the use of tied agents, established in its home Member State or EEA State. Where the European investment firm intends to use tied agents, it shall communicate the identity of those tied agents;
- (b) the competent authority has received the information in paragraph (a) from the European regulatory authority of the European investment firm:

Substituted by:
L.N. 397 of 2017.

Provided that where the European investment firm intends to use tied agents in Malta, the competent authority shall, within one month of receipt of all information, receive from the European regulatory authority of the home Member State the identity of the tied agents which the European investment firm intends to use in Malta. the competent authority shall publish such information.

Amended by:
L.N. 397 of 2017.

(3) Upon receipt of the information referred to in subregulation (2) by the competent authority, the European investment firm may start to provide the investment services concerned in Malta.

Added by:
L.N. 397 of 2017.

(4) The provisions of this regulation shall also apply, *mutatis mutandis*, to credit institutions authorised in another Member State or EEA State wishing to provide investment services as well as ancillary services through tied agents in accordance with Article 34(1) of MiFID, and accordingly references in this regulation to a "European investment firm" shall be deemed to include reference to a "European credit institution."

Added by:
L.N. 397 of 2017.

(5) The procedure outlined in this regulation shall also be applicable where a European investment firm wishes to change the range of services so provided in the exercise of a European right.

Added by:
L.N. 397 of 2017.

Reporting to the competent authority.
Amended by:
L.N. 397 of 2017.

5. (1) The competent authority may, for statistical purposes, require a European investment firm which has established a branch in Malta in terms of these regulations, to report periodically on the activities of the branch in Malta.

Amended by:
L.N. 397 of 2017.

(2) In discharging its responsibilities under MiFID, the competent authority may require branches of European investment firms to provide the information necessary for the monitoring of their compliance with Investment Services Rules and, or Conduct of Business Rules applicable to them:

Amended by:
L.N. 397 of 2017.

Provided that these requirements may not be more stringent than those imposed on licence holders, within the meaning of the Act, for the purposes of monitoring their own compliance with the said Investment Services Rules and, or Conduct of Business Rules.

Enforcement of certain obligations by the competent authority.
Substituted by:
L.N. 397 of 2017.

6. (1) The competent authority shall assume responsibility for ensuring that in providing investment or ancillary services in Malta, the branch of a European investment firm complies with the obligations laid down in Articles 24, 25, 27 and 28 of MiFID as transposed in the Conduct of Business Rules issued by the competent authority and Articles 14 to 26 of Regulations (EU) No 600/2014 and the measures adopted pursuant thereto by the competent authority where allowed in accordance with Article 24(12) of MiFID:

Provided that the competent authority shall not impose any additional requirements save those allowed under sub-regulation (1) on the organisation and operation of the branch of the European investment firm in respect of the matters covered by these regulations.

(2) The competent authority shall have the right to examine branch arrangements of the European investment firm and to request such changes as are strictly needed to enable it to enforce the obligations laid down in Articles 24, 25, 27 and 28 of MiFID as transposed in the Conduct of Business Rules issued by the competent authority and Article 14 to 26 of Regulations (EU) No 600/2014 and the measures adopted pursuant thereto by the competent authority with respect to the services provided by the branch in Malta.

(3) Without prejudice to the possibility of the European Regulatory Authority of the European investment firm establishing a branch in Malta in exercise of a European right to have direct access to records it is required to hold in terms of Article 6 and 7 of MiFID, the competent authority shall enforce the obligations laid down in the said Articles of MiFID with regard to transaction taken by such branch.

On-site inspections by the European regulatory authority.

7. The European regulatory authority, in exercising its responsibilities and after informing the competent authority may carry on-site inspections at a branch which a European investment firm has established in Malta, in exercise of a European right.

Part II - Exercise of Passport Rights by Maltese investment firms

8. (1) A Maltese investment firm may provide investment services as well as ancillary services whether through the establishment of a branch in exercise of a European right, or by the use of a tied agent established in a Member State or EEA State other than Malta in which it has not established a branch, if it satisfies the requirements prescribed in this regulation.

Exercise of passport rights by Maltese investment firms - establishment.
Amended by:
L.N. 397 of 2017.

(2) The Maltese investment firm shall give the competent authority a notice of its intention to establish a branch or use tied agents established in a Member State or EEA State other than Malta in which it has not established a branch, which notice shall contain -

Amended by:
L.N. 397 of 2017.

- (a) the Member State or EEA State within the territory of which the investment firm plans to establish a branch or the Member State or EEA State in which it has not established a branch but plans to use tied agents established there;
- (b) a programme of operations identifying the activities which it seeks to carry on through the branch as well as the ancillary services to be offered;
- (c) the address in the host Member State or EEA State from where documents may be obtained;
- (d) where established, the organisational structure of the branch and indicating whether the branch intends to use tied agents and the identity of those tied agents;
- (e) where tied agents are to be used in the host Member State or EEA State in which the Maltese investment firm has not established a branch, a description of the intended use of the tied agents and an organisational structure, including reporting lines, indicating how the agents fit into the corporate structure of the Maltese investment firm;
- (f) the names of those responsible for the management of the branch or of the tied agent;
- (g) such other clarifications as may be requested by the competent authority.

Amended by:
L.N. 397 of 2017.

Amended by:
L.N. 397 of 2017.

Substituted by:
L.N. 397 of 2017.

Substituted by:
L.N. 397 of 2017.

Added by:
L.N. 397 of 2017.

Added by:
L.N. 397 of 2017.

Renumbered by:
L.N. 397 of 2017.

(3) Unless it has reason to doubt the adequacy of the administrative structure or the financial situation of the Maltese investment firm and shall inform the Maltese investment firm concerned accordingly, taking into account the activities envisaged, the competent authority shall communicate the information referred to in subregulation (2) to the European regulatory authority within three months of receiving all the said information from the Maltese investment firm.

Amended by:
L.N. 397 of 2017.

(4) In addition to the information referred to in sub-regulation (2), the competent authority shall communicate, to the European regulatory authority the details of the accredited compensation scheme of which the Maltese investment firm is a member.

Amended by:
L.N. 397 of 2017.

(5) The competent authority shall inform the European

regulatory authority of any change in the details of a compensation scheme referred to in subregulation (4).

(6) If the competent authority decides to refuse to communicate to the European regulatory authority the information it received from the Maltese investment firm in terms of subregulation (2):

- (a) it shall, within three months from the date when it receives all the said information, give the Maltese investment firm which gave that information the reasons for its decision in writing; and
- (b) that Maltese investment firm may appeal to the Tribunal and the provisions of article 19 of the Act shall apply *mutatis mutandis*.

(7) A branch of the Maltese investment firm shall not commence business unless -

- (a) the European regulatory authority notifies the Maltese investment firm that its branch may commence business in its territory; or
- (b) two months have elapsed from the date of transmission of the information required in terms of subregulation (2) by the competent authority to the European regulatory authority.

(8) In the event of change in any of the particulars communicated in accordance with subregulation (2), the Maltese investment firm shall give written notice of that change to the competent authority at least one month before implementing the change. The competent authority shall also inform the European regulatory authority of this change.

*Amended by:
L.N. 397 of 2017.*

(9) The prudential supervision of a Maltese investment firm shall be the responsibility of the competent authority whether the said Maltese investment firm establishes a branch or provides services in another Member State or EEA State or not, without prejudice to those provisions of MiFID which give responsibility to the European regulatory authority.

*Amended by:
L.N. 397 of 2017.*

(10) Where a Maltese investment firm uses tied agents established in a Member State other than Malta or in an EEA State, such tied agent shall be assimilated to the branch wherever this is established and shall be subject to the provisions of MiFID relating to branches.

*Added by:
L.N. 397 of 2017.*

(11) The provisions of this regulation shall also apply, *mutatis mutandis*, to credit institutions authorised in Malta wishing to provide investment services as well as ancillary services through tied agents, in accordance with Article 35(7) of MiFID, and accordingly references in this regulation to a "Maltese investment firm" shall be deemed to include reference to a "Maltese credit institution".

*On-site visits by
the competent
authority.*

9. In exercise of its responsibilities and after informing the relevant European regulatory authority, the competent authority may carry out on-site inspections in the branch of the Maltese investment firm situated in a Member State or EEA State.

10. (1) A Maltese investment firm may not exercise a European right to provide investment services including ancillary services unless the Maltese investment firm has given the competent authority, notice of its intention to provide services as specified in subregulation (2).

Exercise of passport rights by Maltese investment firms - services.
Amended by:
L.N. 397 of 2017.

(2) For the purposes of this regulation, the Maltese investment firm shall notify the competent authorities of:

- (a) a programme of operations stating in particular the investment services as well as ancillary services which it intends to provide in the territory of that Member State or EEA State and whether it intends to do so through the use of tied agents established in Malta. Where the Maltese investment firm intends to use tied agents it shall communicate to the competent authority the identity of those agents:

Substituted by:
L.N. 397 of 2017.

Provided that the information referred to in subregulation (2) shall also be provided where the Maltese investment firm wishes to change the range of service already provided

- (b) the Member State or EEA State in which it intends to operate;

Amended by:
L.N. 397 of 2017.

(3) The competent authority shall, within one month of receiving the information in accordance with subregulation (2), send a copy of it to the European regulatory authority.

Amended by:
L.N. 397 of 2017.

(4) When the competent authority sends the information, in terms of subregulation (3), the Maltese investment firm may start to provide the service or services in question in the host Member State or EEA State.

(5) In the event of a change in any of the particulars provided by the Maltese investment firm in accordance with subregulation (2), the Maltese investment firm shall give written notice of that change to the competent authority at least one month before implementing the change. The competent authority shall inform the European regulatory authority of those changes.

(6) Where the Maltese investment firm intends to use in which it intends to provide services, the competent authority shall, within one month from receipt of all information communicate to the European regulatory authority the identity of the tied agents that the Maltese investment firm intends to use in the host Member State or EEA State. The host Member State or EEA State shall make public such information.

Amended by:
L.N. 397 of 2017.

(7) The provisions of this regulation shall also apply, *mutatis mutandis*, to credit institutions authorised in Malta wishing to provide investment services as well as ancillary services through tied agents, in accordance with Article 34 (1) of MiFID, and accordingly references in this regulation to a "Maltese investment firm" shall be deemed to include reference to a "Maltese credit institution".

Added by:
L.N. 397 of 2017.

11. A European right shall entitle a Maltese investment firm to provide one or more core investment services:

Entitlement to provide core and ancillary services.

Provided that a European right may additionally entitle a Maltese investment firm to provide one or more ancillary service, but it shall in no case be exercised solely in relation to ancillary services.

Part III - Contraventions by European investment firms

Contraventions by
European
investment firms.
Amended by:
L.N. 174 of 2012.
Substituted by:
L.N. 397 of 2017.

12. Where the competent authority has clear and demonstrable grounds for believing:

- (a) that a European investment firm providing services in Malta, in exercise of a European right, infringes the obligations arising from the provisions of the Act or any regulations issued thereunder or of any Investment Services Rules or Conduct of Business Rules issued by the competent authority, transposing the requirements of MIFID; or
- (b) that a European investment firm that has established a branch in Malta, in exercise of a European right, infringes the obligations arising from the provisions of the Act or regulations issued thereunder or of any Investment Services Rules or Conduct of Business Rules issued by the competent authority transposing the requirements of MIFID which do not confer powers on the competent authority, it shall refer those findings to the European regulatory authority.

(2) If, despite the measures taken by the European regulatory authority or because such measures prove inadequate, the European investment firm persists in acting in a manner that is clearly prejudicial to the interests of Maltese investors or the orderly functioning of the markets, the following shall apply:

- (a) after informing the European regulatory authority, the competent authority shall take all the appropriate measures needed in order to protect investors and the proper functioning of the markets, which shall include the possibility of preventing offending European investment firms from initiating any further transactions in Malta. The competent authority shall also inform the European Commission and ESMA of such measures without undue delay; and
- (b) the competent authority may refer the matter to ESMA which may act in accordance with the powers conferred on it under Article 19 of the Regulation (EU) No. 1095/2010.

(3) Where the competent authority ascertains that a European investment firm that has a branch in Malta infringes the provisions of the Act or regulations issued thereunder or of any Investment Services Rules or Conduct of Business Rules issued by the competent authority and which confer powers on the competent authority, it shall require the European investment firm concerned to put an end to its irregular situation.

(4) If the European investment firm concerned fails to take the necessary steps, the competent authority shall take all appropriate measures to ensure that the European investment firm concerned puts an end to its irregular situation. The nature of those measures shall be communicated to the European regulatory authority.

(5) Where, despite the measures taken by the competent authority, the European investment firm persists in breaching the provisions of the Act or regulations issued thereunder or any of Investment Services Rules or Conduct of Business Rules issued by the competent authority, the competent authority shall, after informing the European regulatory authority take all the appropriate measures needed to protect investors and the proper functioning of the markets. The competent authority shall inform the European Commission and ESMA of such measures without undue delay. In addition, the competent authority may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of the Regulation (EU) No 1095/2010.

(6) Any measure adopted pursuant to this regulation shall be communicated to the European investment firm concerned in writing, together with reasons justifying such measures and shall be subject to a right of appeal to the Tribunal and the provisions of article 19 of the Act shall apply *mutatis mutandis*.

Part IV - Advertising by European investment firms

13. (1) A European investment firm providing services in Malta in exercise of a European right in terms of regulation 4, is not prohibited from issuing or causing to be issued an investment advertisement through any available means of communication in or from Malta provided that it complies with any applicable laws and rules in its home Member State or EEA State and the provisions of regulation 4 of the Investment Services Act (Investment Advertisements and Prospectus Exemption) Regulations, shall apply to such a European investment firm.

Advertising.
Substituted by:
L.N. 251 of 2008.

S.L. 370.08

(2) An investment advertisement issued or caused to be issued in Malta by a European investment firm establishing a branch in Malta, in exercise of a European right in terms of regulation 3 shall comply in every respect with the applicable requirements under the Act and other applicable laws and rules in Malta.

Part V

Added by:
L.N. 397 of 2017.

Administrative Penalties, other administrative measures and Appeals

Added by:
L.N. 397 of 2017.

14. (1) Where a person falling within the scope of these regulations fails to comply with any provisions of such regulations or of any Investment Services Rules or Conduct of Business Rules issued by the competent authority 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 any administrative measure in accordance with the provisions of the Investment Services Act and Banking Act (MiFID and MiFIR Administrative Penalties, Measures and Investigatory Powers) Regulations, 2017.

L.N. 401.

(2) A right of appeal to the Financial Services Tribunal shall lie from the decisions which the competent authority shall take under these regulations and the provisions of article 19 of the Act shall apply *mutatis mutandis*.

Temporary
permission granted
by the competent
authority to UK
investment firms to
continue servicing
existing contracts
with existing
clients.
Added by:
L.N. 243 of 2019.

15. Repealed by Legal Notice 145 of 2023.

SCHEDULE 1
(Regulation 2)

*Amended by:
L.N. 397 of 2017.*

ANNEX I
LIST OF SERVICES AND ACTIVITIES AND FINANCIAL INSTRUMENTS

Section A

Core services

- (1) Reception and transmission of orders in relation to one or more financial instruments;
- (2) Execution of orders on behalf of clients;
- (3) Dealing on own account;
- (4) Portfolio management;
- (5) Investment advice;
- (6) Underwriting of financial instruments and, or placing of financial instruments on a firm commitment basis;
- (7) Placing of financial instruments without a firm commitment basis.

Section B

Ancillary services

- (1) Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management and excluding maintaining securities accounts at the top tier level;
- (2) Granting credits or loans to an investor to allow him to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction;
- (3) Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings;
- (4) Foreign exchange services where these are connected to the provision of investment services;
- (5) Investment research and financial analysis or other forms of general recommendation relating to transactions financial instruments;
- (6) Services related to underwriting;
- (7) Investment services and activities as well as ancillary services of the type included under Section A or B of Annex I related to the underlying of the derivatives included under Section C (5), (6), (7) and (10) - where these are connected to the provision of investment or ancillary services.

Section C

Financial Instruments

- (1) Transferable securities;
- (2) Money-market instruments;
- (3) Units in collective investment undertakings;

(4) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, emission allowances, or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash;

(5) Options, futures, swaps, forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason a default or other termination event);

(6) Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market an MTF, or an OTF except for wholesale energy products traded on an OTF that must be physically settled;

(7) Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in Section C (6) and not being for commercial purposes, which have the characteristics of other derivative financial instruments;

(8) Derivative instruments for the transfer of credit risk;

(9) Financial contracts for differences;

(10) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event), as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Section, which have the characteristics of other derivative financial instruments, having regard to whether, *inter alia*, they are traded on a regulated market or on an OTF or an MTF.

Amended by:
L.N. 174 of 2012;
L.N. 397 of 2017.

SCHEDULE 2 (Regulation 2)

Exemptions

1. MiFID shall not apply to:

- (a) insurance undertaking or undertakings carrying out the reinsurance and retrocession activities referred to in Directive 2009/138/EC when carrying out the activities referred to in this Directive 2009/138/EC;
- (b) Persons which provide investment services exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings;
- (c) persons providing an investment service where that service is provided in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the provision of that service;
- (d) persons dealing on own account in financial instruments other than commodity derivatives or emission allowances or derivatives thereof and not providing any other investment services or performing any other

investment activities in financial instruments other than commodity derivatives or emission allowances or derivatives thereof unless such persons:

- (i) are market makers;
- (ii) are members of or participants in a regulated market or an MTF or have direct electronic access to a trading venue;
- (iii) apply a high-frequency algorithmic trading technique; or
- (iv) deal on own account when executing client orders:"

Persons exempt under paragraphs (a), (i) or (j) are not required to meet the conditions laid down in this paragraph in order to be exempt.

- (e) operators with compliance obligations under Directive 2003/87/EC who, when dealing in emission allowances, do not execute client orders and who do not provide any investment services or perform any investment activities other than dealing on own account, provided that those persons do not apply a high-frequency algorithmic trading technique;
- (f) Persons which provide investment services consisting exclusively in the administration of employee participation schemes;
- (g) Persons which provide investment services which only involve both administration of employee participation schemes and the provision of investment services exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings;
- (h) the members of the ESCB and other national bodies performing similar functions in the Union, other public bodies charged with or intervening in the management of the public debt in the Union and international financial institutions established by two or more Member State which have the purpose of mobilizing funding and providing financial assistance to the benefit of their members that are experiencing or threatened by severe financing problems;
- (i) Collective investment undertakings and pension funds whether coordinated at Union level or not and the depositaries and managers of such undertakings;
- (j) persons:
 - (i) dealing on own account, including market makers, in commodity derivatives or emission allowances or derivatives thereof, excluding persons who deal on own account when executing client orders; or
 - (ii) providing investment services, other than dealing on own account, in commodity derivatives or emission allowances or derivatives thereof to the customers or suppliers of their main business;

provided that:

- for each of those cases individually and on an aggregate basis this is an ancillary activity to their main business, when considered on a group basis, and that main business is not the provision of

investment services within the meaning of MiFID or banking activities under Directive 2013/36/EU, or acting as a market-maker in relation to commodity derivatives,

- those persons do not apply a high-frequency algorithmic trading technique; and
 - those persons notify annually the relevant competent authority that they make use of this exemption and upon request report to the competent authority the basis on which they consider that their activity under points (i) and (ii) is ancillary to their main business;
- (k) Persons providing investment advice in the course of providing another professional activity not covered by the MiFID provided that the provision of such advice is not specifically remunerated;
- (l) associations set up by Danish and Finnish pension funds with the sole aim of managing the assets of pension funds that are members of those associations;
- (m) ‘agenti di cambio’ whose activities and functions are governed by Article 201 of Italian Legislative Decree No 58 of 24 February 1998;
- (n) transmission system operators as defined in Article 2(4) of Directive 2009/72/EC or Article 2(4) of Directive 2009/73/EC when carrying out their tasks under these Directives, under Regulation (EC) No 714/2009, under Regulation (EC) No 715/2009 or under network codes or guidelines adopted pursuant to those Regulations, any persons acting as service providers on their behalf to carry out their task under those legislative acts or under network codes or guidelines adopted pursuant to those Regulations, and any operator or administrator of an energy balancing mechanism, pipeline network or system to keep in balance the supplies and uses of energy when carrying out such tasks.
- That exemption shall apply to persons engaged in the activities set out in this point only where they perform investment activities or provide investment services relating to commodity derivatives in order to carry out those activities. That exemption shall not apply with regard to the operation of a secondary market, including a platform for secondary trading in financial transmission rights;
- (o) CSDs that are regulated as such under Union law to the extent that they are regulated under that Union law.
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