**L.N. 106 of 2005**

# PREVENTION OF FINANCIAL MARKETS ABUSE ACT, 2005 (ACT NO IV OF 2005)

## Prevention of Financial Markets Abuse (Fair Presentation of Investment Recommendations and Disclosure of Conflicts of Interest) Regulations, 2005

IN exercise of the powers conferred by article 25 of the Prevention of Financial Markets Abuse Act, the Prime Minister and Minister of Finance, after consultation with the Malta Financial Services Authority, has made the following regulations:-

Citation and commencement.

**1.** (1) These regulations may be cited as the Prevention of Financial Markets Abuse (Fair Presentation of Investment Recommendations and Disclosure of Conflicts of Interest) Regulations, 2005.

(2) These regulations shall come into force on the 1st April, 2005.

Interpretation.

**2.** In these regulations, unless the context otherwise requires –

"the Act" means the Prevention of Financial Markets Abuse Act;

"appropriate regulation" shall mean any regulation, including self-regulation, in place in Member States as referred to in the Market Abuse Directive;

"distribution channels" shall mean a channel through which information is, or is likely to become, publicly available;

"implementing measures" means any acts and Directives issued under the Market Abuse Directive and as amended from time to time, including in particular, for the purpose of these regulations, the provisions of Commission Directive 2003/125/EC of 22 December 2003 implementing the Market Abuse Directive as regards the fair presentation of investment recommendations and the disclosure of conflicts of interest;

"likely to become publicly available information" shall mean information to which a large number of persons have access;

"recommendation" means research or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers of financial instruments, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public;

"relevant person" means a natural or legal person producing or disseminating recommendations in the exercise of his profession or the conduct of his business;

"research or other information recommending or suggesting investment strategy" means:

(a) information produced by an independent analyst, an investment firm, a credit institution, any other person whose main business is to produce recommendations or a natural person working for them under a contract of employment or otherwise, that, directly or indirectly, expresses a particular investment recommendation in respect of a financial instrument or an issuer of financial instruments; and

(b) information produced by persons other than the persons referred to in paragraph (a) which directly recommends a particular investment decision in respect of a financial instrument.

(2) Words and expressions in these regulations which are also used in the Act have the same meanings as in the Act.

Scope and objective.

**3.** The objective of these regulations is to facilitate the application of article 12 of the Act and implement the relevant provisions of the Market Abuse Directive and all related implementing measures and these regulations shall be interpreted and applied accordingly.

## PART I - PRODUCTION OF RECOMMENDATIONS

Identity of producers of recommendations.

**4.** (1) Any person making a recommendation shall ensure that such recommendation discloses clearly and prominently the identity of the person responsible for its production, in particular:-

(a) the name and job title of the individual who prepared the recommendation; and

(b) the name of the legal person responsible for its production.

(2) Where the relevant person is an investment firm or a credit institution, the identity of the relevant competent authority shall also be disclosed. Where the relevant person is neither an investment firm nor a credit institution, but is subject to self-regulatory standards or codes of conduct, a reference to those standards or codes shall be disclosed.

(3) In the case of non-written recommendations the requirements laid down in sub-regulations (1) and (2) may be satisfied by a reference to the place where such disclosures can be directly and easily accessed by the public, such as an appropriate internet site of the relevant person.

(4) The provisions of sub-regulations (1) and (2) here of shall not apply to journalists subject to equivalent appropriate regulation, including equivalent appropriate self regulation, if any, in Malta or in any other Member State or EEA State, provided that such regulation achieves similar effects as those of sub-regulations (1) and (2).

General standard for fair presentation of recommendations.

**5.** (1) All relevant persons shall take reasonable care to ensure that in any recommendation:

(a) facts are clearly distinguished from interpretations, estimates, opinions and other types of non-factual information;

(b) all sources are reliable or, where there is any doubt as to whether a source is reliable, this is clearly indicated; and

(c) all projections, forecasts and price targets are clearly labelled as such and that the material assumptions made in producing or using them are indicated.

(2) In the case of non-written recommendations the requirements laid down in paragraphs (b) and (c) of sub-regulation (1) hereof may be satisfied by a reference to the place where the indication and, or information required in paragraphs (b) and (c) of sub-regulation (1) hereof be directly and easily accessed by the public, such as an appropriate internet site of the relevant person.

(3) In the case of both written and non-written recommendations, all relevant persons shall take reasonable care to ensure that any recommendation can be substantiated as reasonable, upon request by the competent authorities.

(4) Sub-regulations (1) and (3) shall not apply to journalists subject to equivalent appropriate regulation including equivalent appropriate self regulation, if any, in Malta or in any other Member State or EEA State, provided that such regulation achieves similar effects as those of sub-regulations (1) and (3).

Additional obligations in relation to fair presentation of recommendations.

**6**. (1) In addition to the obligations laid down in regulation 5 where the relevant person is an independent analyst, an investment firm, a credit institution, any related legal person, any other relevant person whose main business is to produce recommendations, or a natural person working for them under a contract of employment or otherwise, such person shall take reasonable care to ensure that at least:-

(a) all substantially material sources are indicated, as appropriate, including the relevant issuer, together with the fact whether the recommendation has been disclosed to that issuer and amended following this disclosure before its dissemination;

(b) any basis of valuation or methodology used to evaluate a financial instrument or an issuer of a financial instrument, or to set a price target for a financial instrument, is adequately summarised;

(c) the meaning of any recommendation made, such as buy, sell or hold, which may include the time horizon of the investment to which the recommendation relates, is adequately explained and any appropriate risk warning, including a sensitivity analysis of the relevant assumptions, indicated;

(d) reference is made to the planned frequency, if any, of updates of the recommendation and to any major changes in the coverage policy previously announced;

(e) the date at which the recommendation was first released for distribution is indicated clearly and prominently, as well as the relevant date and time for any financial instrument price mentioned; and

(f) where a recommendation differs from a recommendation concerning the same financial instrument or issuer, issued during the twelve-month period immediately preceding its release, this

change and the date of the earlier recommendation are indicated clearly and prominently.

(2) Where the requirements laid down in paragraphs (a), (b) or (c) of sub-regulation (1) would be disproportionate in relation to the length of the recommendation distributed, it shall suffice to make clear and prominent reference in the recommendation itself to the place where the required information can be directly and easily accessed by the public, such as a direct internet link to that information on an appropriate internet site of the relevant person, provided that there has been no change in the methodology or basis of valuation used.

(3) In the case of non-written recommendations the requirements laid down sub-regulation (1) may be satisfied by a reference to the place where such information can be freely, directly and easily accessed by the public, such as an appropriate internet site of the relevant person.

General standard for disclosure of interests and conflicts of interest.

**7.** (1) Relevant persons shall disclose all relationships and circumstances that may reasonably be expected to impair the objectivity of a recommendation, in particular where relevant persons have a significant financial interest in one or more of the financial instruments which are the subject of the recommendation, or a significant conflict of interest with respect to an issuer to which the recommendation relates.

(2) Where the relevant person is a legal person, the requirement as provided in sub-regulation (1) shall apply also to any legal or natural person working for it, under a contract of employment or otherwise, who was involved in preparing the recommendation.

(3) Where the relevant person is a legal person, the information to be disclosed in accordance with sub-regulation (1) shall at least include the following:

(a) any interests or conflicts of interest of the relevant person or of related legal persons that are accessible or reasonably expected to be accessible to the persons involved in the preparation of the recommendation;

(b) any interests or conflicts of interest of the relevant person or of related legal persons known to persons who, although not involved in the preparation of the recommendation, had or could reasonably be expected to have access to the recommendation prior to its dissemination to customers or the public.

(4) The recommendation itself shall include the disclosures provided for in sub-regulations (1) and (3). Where such disclosures would be disproportionate in relation to the length of the recommendation distributed, it shall suffice to make clear and prominent reference in the recommendation itself to the place where such disclosures can be directly and easily accessed by the public, such as a direct internet link to the disclosure on an appropriate internet site of the relevant person.

(5) In the case of non-written recommendations the requirements laid down in sub-regulation (1) may be satisfied by a reference to the place where such disclosures can be directly and easily accessed by the public, such as an appropriate internet site of the relevant person.

(6) Sub-regulations (1) to (4) shall not apply to journalists subject to equivalent appropriate regulation, including equivalent appropriate self-regulation, if any, in Malta or in any other Member State or EEA State, provided that such regulation achieves similar effects as those of sub-regulations (1) to (4).

Additional obligations in relation to disclosure of interests or conflicts of interest.

**8.** (1) In addition to the obligations laid down in regulation 7, any recommendation produced by an independent analyst, an investment firm, a credit institution, any related legal person, or any other relevant person whose main business is to produce recommendations, shall disclose clearly and prominently the following information on their interests and conflicts of interest:-

(a) major shareholdings that exist between the relevant person or any related legal person on the one hand and the issuer on the other hand. These major shareholdings include at least the following instances:

(i) when shareholdings exceeding five per cent of the total issued share capital in the issuer are held by the relevant person or any related legal person, or

(ii) when shareholdings exceeding five per cent of the total issued share capital of the relevant person or any related legal person are held by the issuer:

Provided that the competent authority may issue rules to provide for lower thresholds than the five per cent threshold as provided for in these two instances above;

(b) other significant financial interests held by the relevant person or any related legal person in relation to the issuer;

(c) where applicable, a statement that the relevant person or any related legal person is a market maker or liquidity provider in the financial instruments of the issuer;

(d) where applicable, a statement that the relevant person or any related legal person has been lead manager or co-lead manager over the previous twelve months of any publicly disclosed offer of financial instruments of the issuer;

(e) where applicable, a statement that the relevant person or any related legal person is party to any other agreement with the issuer relating to the provision of investment banking services, provided that this would not entail the disclosure of any confidential commercial information and that the agreement has been in effect over the previous twelve months or has given rise during the same period to the payment of a compensation or to the promise to get a compensation paid;

(f) where applicable, a statement that the relevant person or any related legal person is party to an agreement with the issuer relating to the production of the recommendation.

(2) Investment firms and credit institutions shall provide the competent authority upon its request and in prescribed form with any information regarding the effective organisational and administrative arrangements set up within such investment firm or the credit institution for the prevention and avoidance of conflicts of interest with respect to recommendations, including information barriers.

(3) In the case of a natural or legal persons working for an investment firm or a credit institution, under a contract of employment or otherwise, and who were involved in preparing the recommendation, the requirement under sub-regulation (2) of regulation 7 shall include, in particular, disclosure of whether the remuneration of such persons is tied to investment banking transactions performed by the investment firm or credit institution or any related legal person. Where those natural persons receive or purchase the shares of the issuers prior to a public offering of such shares, the price at which the shares were acquired and the date of acquisition shall also be disclosed.

(4) Investment firms and credit institutions shall disclose, on a quarterly basis, the proportion of all recommendations that are "buy", "hold", "sell" or equivalent terms, as well as the proportion of

issuers corresponding to each of these categories to which the investment firm or the credit institution has supplied material investment banking services over the previous twelve months.

(5) Any recommendation shall itself include the disclosures required by sub-regulations (1) to (4), however, where the requirements under sub-regulations (1) to (4) would be disproportionate in relation to the length of the recommendation distributed, it shall suffice to make clear and prominent reference in the recommendation itself to the place where such disclosure can be directly and easily accessed by the public, such as a direct internet link to the disclosure on an appropriate internet site of the investment firm or credit institution.

(6) In the case of non-written recommendations the requirements laid down in sub-regulation (1) may be satisfied by a reference to the place where the information on the relevant interests and conflicts can be directly and easily accessed by the public, such as an appropriate internet site of the relevant person.

## PART II - DISSEMINATION OF RECOMMENDATIONS PRODUCED BY THIRD PARTIES

Identity of disseminators of recommendations.

**9.** Whenever a relevant person under his own responsibility disseminates a recommendation produced by a third party, the recommendation shall indicate clearly and prominently the identity of that relevant person.

General standard for dissemination of recommendations by third parties.

**10**. (1) Whenever a recommendation produced by a third party is substantially altered within disseminated information, that information shall clearly indicate the substantial alteration in detail. Whenever the substantial alteration consists of a change of the direction of the recommendation (such as changing a "buy" recommendation into a "hold" or "sell" recommendation or vice versa), the requirements laid down in regulations 4 to 7 on producers shall be met by the disseminator, to the extent of the substantial alteration.

(2) In addition, relevant legal persons who themselves, or through natural persons, disseminate a substantially altered recommendation shall have a formal written policy so that the persons receiving the information may be directed to where they can have access to the identity of the producer of the recommendation, the recommendation itself and the disclosure of the producer's interests or conflicts of interest, provided that these elements are publicly available.

(3) The provisions of sub-regulations (1) and (2) do not apply to news reporting on recommendations produced by a third party where the substance of the recommendation is not altered.

(4) In case of dissemination of a summary of a recommendation produced by a third party, the relevant persons disseminating such summary shall ensure that the summary is clear and not misleading, mentioning the source document and where the disclosures related to the source document can be directly and easily accessed by the public provided that they are publicly available.

Additional obligations for investment firms and credit institutions.

**11.** In addition to the obligations laid down in regulations 9 and 10 whenever the relevant person is an investment firm, a credit institution or a natural person working for such persons under a contract of employment or otherwise, and disseminates recommendations produced by a third party, the following shall be required:-

(a) the name of the competent authority of the investment firm or credit institution is clearly and prominently indicated;

(b) if the producer of the recommendation has not already disseminated it through a distribution channel, the requirements laid down in regulation 8 on producers are met by the disseminator; and

(c) if the investment firm or credit institution has substantially altered the recommendation, the requirements laid down in regulations 4 to 8 on producers are met.

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