L.N. 108 of 2005

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

Prevention of Financial Markets Abuse (Disclosure and Notification) Regulations, 2005

IN exercise of the powers conferred by article 25 of the Prevention of Financial Markets Abuse Act, 2005, 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 (Disclosure and Notification) Regulations, 2005.

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

Interpretation.

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

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

"implementing measures" means any acts or Directives issued under the Market Abuse Directive as amended from time to time, including in particular for the purpose of these regulations the provisions of Articles 2 and 3 of Commission Directive 2003/124/EC of 22 December 2003 implementing the Market Abuse Directive as regards the definition and public disclosure of inside information and the definition of market manipulation; and the provisions of Articles 5 to 11 of Commission Directive 2004/72/EC of 29 April 2004 implementing the Market Abuse Directive as regards accepted market practices, the definition of inside information in relation to derivatives on commodities, the drawing up of lists of insiders, the notification of managers' transactions and the notification of suspicious transactions; and

"promptly" means within not more than one working day from the relevant date unless otherwise justified by exceptional circumstances.

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

Scope.

3. (1) The objective of these regulations is to implement the relevant provisions of sub-articles (1) to (4) and sub-article (9) of Article 6 of the Market Abuse Directive and all related implementing measures and these regulations shall be interpreted and applied accordingly.

(2) Pursuant to article 4 of the Act, the provisions of regulations 4, 5 and 7 of these regulations shall not apply to any issuer who has not requested or received approval for admission of his financial instruments to trading on a regulated market in Malta or in any other Member State or EEA State.

PART 1 – PUBLIC DISCLOSURE

Duty of public disclosure of inside information.

Means and time-limits for public disclosure of inside information.

4. (1) Subject to the provisions of regulation 5, for the purposes of applying sub-article (1) of article 9 of the Act an issuer, upon the coming into existence of any set of circumstances or the occurrence of an event, even if not yet formalised, giving rise to inside information, shall act promptly to issue a public announcement of any inside information which directly concerns the said issuer.

(2) The public announcement shall take the form of a notice containing the inside information and shall be:-

(a) posted as a notice on the internet site of the company the financial instruments of which are in question, for as long as such inside information may be relevant; and

(b) be published in one or more newspaper widely distributed in Malta and, if applicable, in any other Member State or EEA State or States concerned:

Provided that where it is not practical to publish all the relevant inside information in a newspaper the issuer shall instead publish a public announcement widely distributed as described above, which indicates where and at what times such information is freely available to the public. The inside information shall be made

available to the public upon request either in writing or by other equivalent means approved by the competent authority; and

(c) be drawn up in:

(a) the official language or languages of the Member State or EEA State concerned; or

(b) one of the official languages of the Member State or EEA State concerned; or

(c) in any other language:Provided that, in all the above cases, the language used is customary in the sphere of finance in the Member State or EEA State concerned and is accepted by the competent authority or the foreign authority as the case may be.

(3) The issuer shall ensure that the inside information is made public in a manner which enables fast access and complete, correct and timely assessment of the information by the public. In addition, the issuer shall not combine, in a manner likely to be misleading, the provision of inside information to the public with the marketing of the issuer's activities.

(4) Any significant changes concerning already publicly disclosed inside information shall be publicly disclosed promptly after these changes occur, through the same channel as the one used for public disclosure of the original information.

(5) Where an issuer has requested or received approval for admission to trading of financial instruments on a regulated market in a Member State or EEA State other than Malta, such issuer shall take reasonable care to ensure that the disclosure of inside information to the public is synchronised as closely as possible between all categories of investors in all relevant Member States and EEA States.

Delay of Disclosure of Inside Information.

5. (1) For the purposes of applying sub-article (2) of article 9 of the Act an issuer may under his own responsibility delay the public disclosure of inside information required such as not to prejudice his legitimate interests: Provided that such omission shall not be likely to mislead the public and provided that the issuer is able to ensure the confidentiality of the information the disclosure of which, was delayed.

(2) The issuer shall promptly inform the competent authority of its decision to delay the public disclosure of inside information.

Legitimate interests for delaying public disclosure and confidentiality.

6. (1) For the purposes of applying sub-article (2) of article 9 of the Act legitimate interests may, in particular, relate to the following non-exhaustive circumstances:-

(a) negotiations in course, or related elements, where the outcome or normal pattern of those negotiations would be likely to be affected by public disclosure. In particular, in the event that the financial viability of the issuer is in grave and imminent danger, although not within the scope of the applicable insolvency law, public disclosure of information may be delayed for a limited period where such a public disclosure would seriously jeopardise the interest of existing and potential shareholders by undermining the conclusion of specific negotiations designed to ensure the long-term financial recovery of the issuer; and

(b) decisions taken or contracts made by the management body of an issuer which need the approval of another body of the issuer in order to become effective, where the organisation of such an issuer requires the separation between these bodies: Provided that a public disclosure of the information before such approval together with the simultaneous announcement that this approval is still pending would jeopardise the correct assessment of the information by the public.

(2) So as to be able to ensure the confidentiality of inside information, an issuer shall control access to information the disclosure of which is delayed, and, in particular shall ensure that the issuer has:-

(a) established effective arrangements to deny access to such information to persons other than those who require it for the exercise of their functions within the issuer;

(b) taken the necessary measures to ensure that any person with access to such information acknowledges the legal and regulatory duties entailed and is aware of the sanctions attaching to the misuse or improper circulation of such information; and

(c) in place measures which allow immediate public disclosure in case the issuer was not able to ensure the confidentiality of the relevant inside information, without prejudice to the proviso of sub-article (3) of Article 9 of the Act.

PART II – NOTIFICATION

Duty to provide Lists of insiders.

7. (1) For the purposes of applying sub-article (4) of article 9 of the Act the provisions of this regulation shall also apply.

(2) Lists of insiders shall state at least:-

(a) the identity of any person having access to inside information;

(b) the reason why any such person is on the list;

(c) the date at which the list of insiders was created and updated.

(3) An issuer when drawing up the required lists of insiders, must take the necessary measures to ensure that any person on such a list that has access to inside information acknowledges the legal and regulatory duties entailed and is aware of the sanctions attaching to the misuse or improper circulation of such information.

(4) Lists of insiders shall be updated promptly:-

(a) whenever there is a change in the reason why any person is already on the list;

(b) whenever any new person has to be added to the list; and

(c) when any person already on the list has no longer access to inside information.

(5) Lists of insiders will be kept by both the issuer and the competent authority for at least five years after being drawn up or updated.

Duty of Notification by Persons discharging managerial responsibilities within an issuer etc.

8. (1) For the purposes of applying article 10 of the Act the persons referred to in such Article shall ensure that the competent authority is notified within five working days of the existence of any transactions conducted on their own account where such transactions relate to:-

(i) bonds and shares of the said issuer admitted to trading on a regulated market;

(ii) derivatives linked to the shares of the said issuer; or

(iii) other financial instruments linked to the shares of the said issuer.

(2) The competent authority shall answer on an individual basis all public requests for information concerning transactions referred to in sub-regulation (1) where the request is made in writing and relates to a named issuer and a clearly identifiable person who is either a person discharging managerial responsibilities within such issuer or any other person closely associated to him.

(3) (a) The Minister may by regulation under the Act prescribe that, until the total amount of transactions, as computed in paragraph (b) hereunder, has reached the equivalent of five thousand Euros at the end of a calendar year, no notification is required or notification may be delayed until the 31st January of the following year.

(b) The total amount of transactions shall be computed by summing up the transactions conducted on the own account of persons discharging managerial responsibilities within an issuer with the transactions conducted on the own account of persons closely associated with a person discharging managerial responsibilities within an issuer.

(4) The rules of notification to which those persons have to comply with shall be those of the Member State or EEA State where the issuer is registered. Where the issuer is registered in Malta, the notification to the competent authority shall be made in the form prescribed in Schedule I to these regulations.

(5) Where the issuer is not registered in a Member State or EEA State, the notification shall be made to the competent authority of the particular Member State or EEA State which is defined as the home Member State in terms of Directive 2003/71/EC in relation to Article 10 of the aforementioned Directive.

Duty of Notification of persons professionally arranging transactions in financial instruments.

Suspicious transactions to be notified.

9. (1) For the purposes of applying article 11 of the Act, any person professionally arranging transactions in financial instruments who reasonably suspects that a transaction might constitute the prohibited use of inside information or market manipulation shall promptly notify the competent authority in the form prescribed in Schedule II to these regulations.

(2) Any person professionally arranging transactions in financial instruments shall decide on a case-by-case basis whether there are reasonable grounds for suspecting that a transaction involves the prohibited use of inside information or market manipulation, taking into account the elements constituting the prohibited use of inside information or market manipulation, referred to in the Act and regulations issued under the Act as regards the definition and public disclosure of inside information and the definition of market manipulation and inside information in relation to derivatives on commodities.

(3) Without prejudice to the provisions of territorial application in Article 5 of the Act persons professionally arranging transactions shall be subject to the rules of notification of the Member State or EEA State in which they are registered or have their head office, or in the case of a branch, the Member State or EEA State where the branch is situated.

(4) The notification shall be addressed to the competent authority of the Member State or EEA State referred to in sub-regulation (3).

(5) Upon receiving the notification of suspicious transactions related to regulated markets outside Malta the competent authority shall transmit such information immediately to the competent authorities of the regulated markets concerned.

Means of notification.

10. (1) Persons subject to a notification obligation in regulations 8 and 9 of these regulations may provide the completed form prescribed in the relevant Schedule to these regulations to the competent authority:-

(a) in written form by mail,

(b) electronic mail; and

(c) telecopy or fax:

Provided that in all the above cases the means used is secure and allows the competent authority to identify the sender with reasonable certainty.

(2) Persons subject to a notification obligation in regulations 8 and 9 of these regulations may also provide the information required to the competent authority by telephone:

Provided that in this case confirmation is notified by means of a completed form prescribed in the appropriate Schedule to these regulations upon the request of the competent authority.

(3) Where that information required by the competent authority is not available at the time of notification, the notification shall include at least the reasons why the notifying person suspects that the transactions might constitute the prohibited use of inside information or market manipulation.

All remaining information shall be provided to the competent authority as soon as it becomes available.

Liability and professional secrecy.

11. (1) The persons notifying to the competent authority as referred to in regulation 9 shall not inform any other person, in particular the persons on behalf of whom the transactions have been carried out or parties related to those persons, of this notification, except by virtue of provisions laid down by law.

(2) The fulfilment of the requirement referred to in regulation 9 shall not involve the notifying person in liability of any kind, providing the notifying person acts in good faith.

(3) The competent authority shall not disclose to any person the identity of the person having notified these transactions, if disclosure would, or would be likely to harm the person having notified the transactions. This provision is without prejudice to the requirements of the enforcement and the sanctioning regimes under the Market Abuse Directive and to the rules on transfer of personal data laid down in Directive 95/46/EC.

(4) The notification in good faith to the competent authority as referred to in regulation 9 shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not involve the person notifying in liability of any kind related to such notification.

Schedule I

Notification by Persons discharging managerial responsibilities etc within an Issuer pursuant to Article 10 of the *Prevention of Financial Markets Abuse Act, 2005*

Date							**Notification Ref. No**										

Part 1: Notification of Managers' Transactions

Name of person discharging managerial responsibility within the issuer/name of person closely associated with such a person
Capacity of person making notification and the reasons for his responsibility to notify (eg in own name, mandate, delegated authority)
Name of the relevant issuer
Description of the Financial Instrument
Nature of Transaction (acquisition or disposal)
Date and Place of the transaction[1]
Price and Volume of the transaction

Part 2: Further Information (if any)

Has the competent authority, and/or a Recognised Investment Exchange already been advised by telephone, written communication or otherwise? **If so, indicate the organisation and person contacted** _____
I, as the person making the notification, hereby understand that the competent authority is duty-bound to ensure that public access to information concerning the transaction herein notified is readily available as soon as possible.

[1] Regulation 8 of the Prevention of Financial Markets Abuse (Disclosure and Notification) Regulations, 2005 requires that notification is made within five (5) working days of the transaction being conducted. Any delay shall bring about liability in terms of Article 22 of the Prevention of Financial Markets Abuse Act.

Name of person making notification		Official Rubber Stamp of the Licence Holder
Date of Notification		
Signature of person making notification.		

Schedule II

Notification by persons professionally arranging transactions in financial instruments pursuant to article 11 of the *Prevention of Financial Markets Abuse Act 2005*[2]

Date | | | | | | | | **Notification Ref. No** | | | | | | | | | | |

Check appropriate box:

☐ **Initial Notification/Disclosure** ☐ **Supplemental Notification**

Connected Notification **Ref. No.** _____ **Ref. No.** _____

Part 1: Notifying Person/Entity –Details of Person Making Notification

Name of entity
Name of Individual (making Notifications)
Position Held Capacity in which the person is making the notification ☐ Dealing on own account. ☐ On behalf of third Parties. ☐ As underwriter. ☐ other.

Telephone Number/s	**Fax Number/s**
Home	**Home**
Work	**Work**

Part 2: Identification Details

Name of person/persons/entity who carried out the transaction/s.
Capacity in which the person(s) performing the transaction(s) acts –e.g. broker, underwriter, agent
Address of person/persons/entity

[2] Article 11 of the Prevention of Financial Markets Abuse Act requires that notification is made without delay. Any delay shall bring about liability in terms of Article 22 of the Act.

Telephone Number(s) of person/persons/entity **Date of birth (where applicable)**

Name of person/persons/entity – on behalf of whom the transaction/s has/have been carried out. **Address of person/persons/entity** **Telephone Number(s) of person/persons/entity** **Date of birth (where applicable)**

Name(s) of any other person/persons/entity (Identities of any persons known to be involved in the transaction/s) **Relation to person carrying out the transaction.** **Position Held** **Address of person/persons/entity** **Telephone Number(s) of person/persons/entity** **Date of birth (where applicable)**	

Part 3: Details of Transaction

Description of the Transaction: (including all characteristics of order and market and at least the ISIN Code of the instrument; the market(s) Concerned; the original order's entry date/time, price and size, the times and sizes of the transaction(s); the type and characteristics of the order).
Reasons for suspicion that the transaction might constitute market abuse (all relevant information) **:**

Part 4: Further Information

Further information which may be of significance. The notification form should be described in a complete and clear manner. **(please list any accompanying material you are supplying)** ***Continue on a separate page if necessary.***
Total number of Attachments – please list any accompanying material you are supplying
Has the competent authority and/or the law enforcement authorities and/or a Recognised Investment Exchange already been advised by telephone, written communication or otherwise? **If so, indicate the organisation and person contacted** _____
DECLARATION **I, as the undersigned person making the notification, understand that where any of the information requested in this form has not been submitted due to it not being available at the time of notification shall provide the competent authority with any remaining information as soon as it becomes available.**

Name of person making notification. **Date of Notification**		Official Rubber Stamp of the Licence Holder
Signature of person making notification.		

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