L.N. 330 of 2007

FINANCIAL MARKETS ACT
(CAP. 345)

European Rights for Regulated Markets Regulations, 2007

IN exercise of the powers conferred by article 3 of the Financial Markets Act, the Prime Minister and Minister of Finance, acting on the advice of the Malta Financial Services Authority as the competent authority for the purposes of the Act, has made the following regulations:

Title, commencement and objective.

1. (1) The title of these regulations is the European Rights for Regulated Markets Regulations, 2007.

(2) These regulations shall come into force on the 1st November, 2007.

(3) The purpose of these regulations is to implement Articles 42 (6) and 62 (3) and (4) of the Directive, as herein defined, and shall be interpreted and applied accordingly.

Interpretation.

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

"the Act" means the Financial Markets Act;

"competent authority" means the Malta Financial Services Authority appointed under article 2 of the Act;

"the 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;

"European regulated market" means a regulated market as defined in Article 4 (1) (14) of the Directive authorised by its

European regulatory authority within the meaning of Article 36 of the Directive;

"European right" means the entitlement of a Maltese or a European regulated market to provide appropriate arrangements in a Member State or EEA State other than that in which it has been authorised, so as to facilitate access to and trading on such a market by remote members or participants established in the territory of that other Member State or EEA State;

"Home Member State or EEA State" means the Member State or EEA State in which the regulated market is registered or, if under the law of that Member State or EEA State it has no registered office, the Member State or EEA State in which the head office of the regulated market is situated;

"Host Member State or EEA State" means the Member State or EEA State in which a Maltese regulated market provides appropriate arrangements so as to facilitate access to trading on its system by remote members or participants established in that same Member State or EEA State;

"Maltese regulated market" means a regulated market authorised in terms of the Act that is entitled to carry on an activity in exercise of a European right a Member State or EEA State other than Malta.

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

Part I

Exercise of European Right by European Regulated Markets

Exercise of European rights by European regulated markets.

3. (1) A European regulated market may exercise a European right in Malta.

(2) A European regulated market that intends to exercise a European right in Malta shall be obliged to give the European regulatory authority of its home Member State or EEA State a notice of its intention to exercise a European right in Malta.

(3) The European regulatory authority shall communicate, within one month, the information provided in terms of sub-regulations (2) to the competent authority.

(4) The European regulatory authority shall, on the request of the competent authority and within a reasonable time, communicate the identity of the members or participants of the European regulated market.

Part II

Exercise of European Rights by Maltese Regulated Markets

Exercise of European rights by Maltese regulated markets.

4. (1) A Maltese regulated market may exercise a European right in another Member State or EEA State.

(2) A Maltese regulated market that intends to exercise a European right in another Member State or EEA State shall be obliged to give the competent authority a notice of its intention to exercise such right wherein it shall indicate the Member State or the EEA State in which it intends to provide such arrangements.

(3) The competent authority shall communicate, within one month, the information provided in terms of sub-regulation (2) to the European regulatory authority of the host Member State or EEA State.

(4) The competent authority shall, on the request of the European regulatory authority of the host Member State or EEA State and within a reasonable time, communicate the identity of the members or participants of the Maltese regulated market.

Part III

Contraventions by Persons operating a Regulated Market in Malta in exercise of a European Right

Contraventions.

5. (1) Where the competent authority has clear and demonstrable grounds for believing that a person, authorised to operate a regulated market in any Member State or EEA state and who is providing access to its systems in Malta in exercise of a European right, is in breach of its obligations arising from the provisions adopted pursuant to the Directive, it shall refer those findings to the European regulatory authority.

(2) If, despite the measures taken by the European regulatory authority or because such actions prove inadequate, the person providing access to its systems in Malta in exercise of a European right, persists in acting in a manner which is clearly prejudicial to the interests of investors in Malta or the orderly function of markets, the competent

authority shall, after informing the European regulatory authority, take all the appropriate measures needed in order to protect investors and the proper functioning of the markets. This shall include the possibility of preventing the regulated market providing access to its systems in Malta, in exercise of a European right from making the said arrangements available to remote members or participants established in Malta. The European Commission shall be informed of such measures without delay.

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

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