

L.N. 331 of 2007

**FINANCIAL MARKETS ACT
(CAP. 345)**

**Financial Markets Act (Membership and Access) Regulations,
2007**

IN exercise of the powers conferred by article 49 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:

1. (1) The title of these regulations is the Financial Markets Act (Membership and Access) Regulations, 2007. Title, commencement and objective.

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

(3) The objective of these regulations is to implement articles 33 and 42(3) of the Directive, as herein defined, and shall be interpreted and applied accordingly.

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

“the Act” means the Financial Markets Act and the words and expressions used shall have the same meaning as is given to them in the said Act; Cap. 345.

“branch” means a place of business which is a part of the European investment firm, and which has no legal personality and which provides the services for which the European investment firm has been authorised; all the places of business set up in the same Member State or EEA State by a European investment firm with headquarters in another Member State or EEA State shall be regarded as a single branch;

“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;

“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;

(b) where the European investment firm is a legal person, the Member State or EEA State in which its registered office is situated; or

(c) if the European investment firm has, under its national law, no registered office, the Member State or EEA State in which its head office is situated;

(2) For the purposes of these regulations, “Persons licensed under the Investment Services Act” shall mean persons licensed to execute orders on behalf of other persons and, or to deal on own account in terms of the Schedule to the Investment Services Act.

Membership of a regulated market.

3. Persons licensed under the Investment Services Act may become members of a regulated market and participate in the clearing and settlement system provided for members of such a regulated market.

Membership of or access to a regulated market.

4. A European investment firm may, either directly or indirectly, become a member of or have access to a regulated market established in Malta and participate in the clearing and settlement system provided for members of such a regulated market.

Forms of membership or access.

5. (1) European investment firms shall have the right of membership or have access to any regulated market established in Malta by means of any one of the following arrangements:

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(a) directly, by setting up branches in Malta, in terms of the European Passport Rights for Investment Firms Regulations, 2007; and, or

(b) indirectly, by setting up a subsidiary company in Malta duly licensed in terms of the Investment Services Act and

regulations issued thereunder, or by acquiring other investment firms in Malta and which are already members of any such regulated market or already have access thereto.

(2) Where a regulated market operates without any requirement for a physical presence, European investment firms may become members of or have access to such regulated market on the same basis as aforesaid without having to be established in Malta.

(3) The arrangements referred to in sub-regulations (1) and (2) hereof shall be provided for in the bye-laws of a regulated market.

6. (1) Persons licensed under the Investment Services Act and European investment firms which are granted the right of membership or access to a regulated market in terms of these regulations shall comply with any applicable bye-laws issued by the regulated market, including bye-laws relating to the membership, conduct of business and fees; bye-laws relating to transactions effected by means of the facilities provided by the regulated market; requirements and procedures for clearing and settlement; and any other bye-laws of the regulated market which are applicable to members of the regulated market or to persons having access to the regulated market in terms of these regulations.

Compliance with
bye-laws issued by
the regulated
market.

(2) Branches or subsidiaries of European investment firms referred to in sub-regulation (1) shall comply with the aforementioned bye-laws on a continuing basis if they are to continue to benefit from the right of membership of or access to a regulated market, and the bye-laws of a regulated market shall include provision to this effect.

(3) Persons licensed under the Investment Services Act and European investment firms referred to in sub-regulation (1) shall also on a continuous basis comply with the capital adequacy requirements set out and supervised by the home Member State or EEA State in terms of Directive 2006/49/EC and with any additional capital adequacy requirements in respect of matters not covered by the said Directive which the competent authority may impose.

7. These regulations shall apply mutatis mutandis to European credit institutions within the meaning of regulation 2 and to credit institutions licensed in terms of the Banking Act.

Credit institutions.

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8. Regulated markets may also admit as members or participants persons who satisfy the following requirements:

Other persons that
may be admitted as
members or
participants.

(a) are fit and proper;

- (b) have a sufficient level of trading ability and competence;
- (c) have, where applicable, adequate organizational arrangements;
- (d) have sufficient resources for the role they are to perform, taking into account the different financial arrangements that the regulated market may have established in order to guarantee the adequate settlement transactions.

Repeal of L.N. 285
of 2004.

9. The Membership and Access Regulations, 2004 are hereby
being repealed