L.N. 333 of 2007

FINANCIAL MARKETS ACT (CAP. 345)

Regulated Markets (Authorisation Requirements) Regulations, 2007

IN exercise of the powers conferred by articles 3 and 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:

Title, commencement and objective.

1. (1) The title of these regulations is the Regulated Markets (Authorisation Requirements) Regulations, 2007.

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

(3) The purpose of these regulations is partially to implement the relevant provisions of Articles 37, 39, 42 and 43 of the Directive and shall be interpreted and applied accordingly.

Interpretation.

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

Cap. 345.

"the Act" means the Financial Markets Act;

"applicant" means a person who has submitted an application to the competent authority to become authorised as a regulated market;

"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;

"the Schedule" means the Schedule to these regulations.

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

Authorisation requirements.

3. (1) The Schedule sets out the authorisation requirements which must be satisfied by an applicant if it is to qualify as a regulated market and which must be satisfied by each regulated market on a continuing and ongoing basis if it is to remain a regulated market.

Satisfaction of authorisation requirements.

4. (1) In considering whether an applicant or a regulated market satisfies the authorisation requirements applying to it under these regulations, the competent authority may take into account any other circumstances that it may deem relevant in each particular case.

(2) An applicant or a regulated market may satisfy authorisation requirements applying to it under these regulations by entering into an agreement to the satisfaction of the competent authority for any functions specified in the said agreement to be performed on its behalf by another person.

(3) An agreement as referred to in sub-regulation (2), hereinafter referred to as the "delegation agreement", shall be made in writing, and entered into between an applicant or a regulated market, as the case may be, and the person who is to perform any functions on behalf of such applicant or a regulated market. Such delegation agreement shall be executed by duly authorised officials of the governing body of the respective entities.

(4) Where an applicant or a regulated market enters into any delegation agreement, any such agreement shall not affect the responsibility imposed by the Act on such applicant or regulated market to satisfy authorisation requirements applying to it under these regulations.

(5) The liability of the regulated market for any breaches of the authorisation requirements or any other regulations or Financial Market Rules issued under the Act, shall not be affected or reduced as a result of the regulated market entering into any delegation agreement.

(6) Any person who, not being a regulated market, is to perform any specified function in terms of any delegation agreement shall be confirmed, after due verification, by the applicant or the regulated market as the case may be, as being a fit and proper person being able and willing to perform such functions. This confirmation shall be made by the governing body of the applicant or regulated market, as the case may be, in the form of a written declaration to that effect which shall be submitted to the competent authority together with a duly authenticated true copy of the relevant delegation agreement.

(7) Notwithstanding anything in the foregoing, the regulated market shall be responsible towards the competent authority for the supervision of the proper performance of any functions performed by any person throughout any such period that any delegation agreement shall remain in force.

5. The Recognized Investment Exchange (Recognition Requirements) Regulations, 2003 are hereby being repealed. Repeal of L.N. 3 of 2003.

SCHEDULE

(REGULATION 3)

AUTHORISATION REQUIREMENTS

Financial Resources

1. (1) The regulated market must have financial resources sufficient for the proper performance of its functions.

(2) Without prejudice to the generality of the foregoing, each regulated market shall satisfy at all times those minimum financial resources requirements and minimum financial reporting requirements that may be required by the competent authority from time to time.

Requirements for the management of the regulated market

2. (1) The regulated market must be a fit and proper person to perform its functions and be of good standing.

(2) The persons who effectively direct the business and the operations of a regulated market must satisfy the fit and proper criterion, by being of sufficient good repute and sufficiently experienced as to ensure the sound and prudent management and operation of the regulated market:

Provided that persons who already effectively direct the business and the operations of a regulated market or a European Regulated Market, may be deemed to automatically satisfy this requirement.

Organisational requirements

3. (1) The regulated market shall have arrangements to identify clearly and manage those potential adverse consequences, for the operation of the regulated market or for its participants, of any conflict of interest between the interest of the regulated market, its owners or its operator and the sound functioning of the regulated market, and in particular where such conflicts of interest might prove prejudicial to the accomplishment of any functions delegated to the regulated market by the competent authority.

(2) The regulated market must ensure that:

(a) all the systems and controls used in the performance of its functions are adequate and appropriate;

(b) it is adequately equipped to manage the risks to which it is exposed;

(c) it has appropriate arrangements and systems to identify all significant risks to its operations and it has effective measures to mitigate those risks;

(d) it has proper arrangements for the sound management of the technical operations of its systems, including the establishment of effective contingency arrangements to cope with risks of disruptions to these systems;

(e) it has effective arrangements to facilitate the efficient and timely finalisation of the transactions executed under its systems.

(3) The regulated market shall have transparent and non-discriminatory bye-laws and procedures to facilitate the efficient and timely finalisation of the transactions executed under its systems.

Access to a regulated market

4. (1) The regulated market shall establish and maintain transparent and non-discriminatory bye-laws, based on objective criteria, governing access to or membership of the regulated market.

(2) Those bye-laws shall specify any obligations for the members or participants arising from:

(a) the constitution and administration of the regulated market;

(b) requirements relating to transactions on the market;

(c) professional standards imposed on the staff of the investment firms or credit institutions that are operating on the market;

(d) the conditions established, for members or participants other than investment services licence holders;

(e) the requirements and procedures for the clearing and settlement of transactions concluded on the regulated market.

(3) The operator of the regulated market shall communicate to the Competent Authority, on a regular basis, the list of its members and participants.

Monitoring of compliance with the bye-laws of the regulated market and with other legal obligations

5. (1) Regulated markets shall:

(a) establish and maintain effective arrangements and procedures for the regular monitoring of the compliance by their members or participants with their bye-laws; and

(b) monitor the transactions undertaken by their members or participants under their systems in order to identify breaches of those bye-laws, disorderly trading conditions or conduct that may involve market abuse.

(2) Operators of the regulated markets shall:

(a) report significant breaches of their bye-laws or disorderly trading conditions or conduct that may involve market abuse to the competent authority of the regulated market; and

(b) supply the relevant information without delay to the competent authority and provide full assistance to the latter in investigating and prosecuting market abuse occurring on or through the systems of the regulated market.

Promotion and maintenance of standards

6. (1) The regulated market must be able and willing to promote and maintain high standards of integrity and fair dealing in the carrying on of activities by persons in the course of using the facilities provided by the regulated market.

(2) The regulated market must be able and willing to cooperate, by the sharing of information or otherwise, with the competent authority, and with any other authority, body or person having responsibility for the supervision or regulation of any regulated activity or other financial service, or with an overseas regulator.

(3) For the purposes of the foregoing provision, the regulated market must have appropriate arrangements with its members enabling it to obtain confidential information from its members and to disclose such information to the competent authority and other appropriate bodies and in particular, to assist and collaborate with

the competent authority without delay in response to a specific written request received from the competent authority in the performance of its functions according to law.

Complaints

7. (1) The regulated market must have effective arrangements for the investigation and resolution of complaints arising in connection with the performance of, or failure to perform, any of its functions:

Provided that the foregoing does not extend to complaints about the content of bye-laws made by the regulated market.

(2) The arrangements must include arrangements for a complaint to be fairly and impartially investigated by a person independent of the regulated market, and for him to report on the result of his investigation to the regulated market and to the complainant.

(3) The arrangements must confer on the person mentioned in subparagraph (2) the power to recommend, if he thinks it appropriate, that the regulated market:

(a) makes a compensatory payment to the complainant;

(b) remedies the matter complained of, or takes both of those steps.

(4) Subparagraph (b) is not to be construed as preventing the regulated market from making arrangements for the initial investigation of a complaint to be conducted by the regulated market.

Default bye-laws in respect of market contracts

8. (1) The regulated market must have default bye-laws which, in the event of a member of the regulated market being or appearing to be unable to meet his obligations in respect of one or more market contracts, enable action to be taken in respect of unsettled market contracts to which he is a party.

(2) The bye-laws may authorise the taking of the same or similar action in relation to a member who appears to be likely to become unable to meet his obligations in respect of one or more market contracts.

(3) The regulated market must have adequate arrangements for ensuring that parties to the contract are notified as soon as reasonably practicable of the default,

the identity of the other parties to the contract and of any decision taken under the bye-laws in relation to contracts to which they are a party.

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