L.N. 243 of 2011

INVESTMENT SERVICES ACT (CAP. 370)

Investment Services Act (UCITS Management Company Passport) Regulations, 2011

IN exercise of the powers conferred by article 12 of the Investment Services Act, the Minister of Finance, the Economy and Investment, acting on the advice of the Malta Financial Services Authority, has made the following regulations:-

PRELIMINARY

Citation, commencement and scope.

1. (1) The title of these regulations is the Investment Services Act (UCITS Management Company Passport) Regulations, 2011.

(2) These regulations shall come into force on 1st July, 2011.

(3) These regulations shall apply to Maltese management companies and to European management companies providing services in Malta through the establishment of a branch or under the freedom to provide services.

(4) These regulations transpose and implement, in part, the provisions of articles 1(3), 2(1)(c) to (e) and (g), 17 to 21 and 109(1) to (3) of the UCITS Directive and they shall be interpreted and applied accordingly.

Interpretation

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

"the Act" means the Investment Services Act; Cap. 370.

"branch" means a place of business which is part of the management company, which has no legal personality and which provides the services for which the management company has been authorised;

"ESMA" means the European Securities and Markets Authority established by Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of the 24 November 2010;

"European management company" means a management

company authorised by a European regulatory authority in a Member State or EEA State other than Malta and the regular business of which is the management of UCITS;

"European management company home Member State or EEA State" means the Member State or EEA State in which the European management company has its registered office;

"European management company host Member State or EEA State" means the Member State or EEA State, other than the home Member State or EEA State within the territory of which a European management company has a branch or provides services;

"European UCITS" means a UCITS authorised by a European regulatory authority in a Member State or EEA State other than Malta;

"home Member State or EEA State" means the Member State or EEA State in which the registered office and head office of the management company is situated;

"host Member State or EEA State" means the Member State or EEA State, other than the home Member State or EEA State, within the territory of which a management company has a branch or provides services;

"key investor information" shall have the same meaning assigned to it in the Investment Services Rules;

"Maltese management company" means a management company licensed by the competent authority with its head office and registered office situated in Malta and the regular business of which is the management of UCITS;

"Maltese UCITS" means -

(a) an investment company, a partnership *en commandite* or a limited partnership with its registered office and head office situated in Malta and licensed in terms of the Act;

(b) where the UCITS is constituted as a common fund, a UCITS domiciled in Malta in terms of the Investment Services Act (Contractual Funds) Regulations, and licensed in terms of the Act;

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(c) where the UCITS is established as a unit trust, a unit trust whose proper law is the law of Malta;

"Tribunal" means the Financial Services Tribunal established in terms of the Malta Financial Services Authority Act; Cap. 330.

"UCITS" means undertakings for collective investment in transferable securities in terms of regulation 3 of the Investment Services Act (Marketing of UCITS) Regulations, 2011;

"UCITS Directive" means Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast);

"UCITS home Member State or EEA State" means the Member State or EEA State in which a UCITS is authorised pursuant to Article 5 of the UCITS Directive.

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

(3) In the event that any of these regulations conflict with the provisions of the UCITS Directive, the latter shall prevail.

FREEDOM OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES BY MALTESE MANAGEMENT COMPANIES

Freedom of establishment of Maltese management companies - branch.

3. (1) Where a Maltese management company decides to establish a branch in a Member State or EEA State other than Malta, it shall notify the competent authority accordingly.

(2) A notification in terms of sub-regulation (1) shall be accompanied by the following information and documentation:

(a) the Member State or EEA State within the territory of which the Maltese management company plans to establish a branch;

(b) a programme of operations setting out the activities and services as prescribed in the applicable Investment Services Rules which shall be carried out by such branch;

(c) the proposed organisational structure of the branch, including a description of the risk management process in place and a description of the procedures and arrangements implemented to ensure a suitable investor complaints procedure in terms of the Investment Services Rules;

(d) the address of the proposed branch in the host Member State or EEA State from where documents may be obtained; and

(e) the names of the persons responsible for the management of the branch.

(3) The competent authority shall communicate the information in sub-regulation (2) and details of the Maltese investor compensation scheme to the European regulatory authority of the Member State or EEA State where the Maltese management company intends to establish a branch within two months of receiving such information. The competent authority shall also inform the Maltese management company of such communication accordingly.

(4) Where the branch of the Maltese management company will carry out the activity of collective portfolio management pursuant to the Investment Services Rules, the notification made in accordance with sub-regulations (1) and (2) shall also include an attestation that the Maltese management company has been licensed to pursue such activity in terms of the UCITS Directive, a description of the scope of the Maltese management company's licence and details of any restriction on the types of UCITS that the Maltese management company is licensed to manage.

(5) Where the competent authority has sufficient reason to doubt the adequacy of the administrative structure or the financial situation of a Maltese management company, taking into account the activities for which it has been licensed, it may refuse to make the communication referred to in sub-regulation (3) and shall, within two months from the date of receipt of the notice referred to in sub-regulation (1), give the Maltese management company reasons for such refusal.

(6) A Maltese management company which pursues activities through a branch within the territory of another Member State or EEA State shall comply with the applicable provisions on conduct of business in force in that Member State or EEA State.

(7) A branch of a Maltese management company shall not commence business unless:

(a) the European regulatory authority in the Member State or EEA State in which the Maltese management company proposes to establish a branch has notified the Maltese management company of the receipt of the communication referred to in sub-regulation (3) from the competent authority;

or

(b) two months have elapsed from the date on which the competent authority has transmitted the communication referred to in sub-regulation (3) and the Maltese management company has not received any communication from such European regulatory authority.

(8) Where the Maltese management company plans a change in any of the particulars communicated in accordance with sub-regulation (2)(b) to (e), written notice of such change shall be given to the competent authority and to the European regulatory authority of the Member State or EEA State in which the branch is established not less than one month prior to the implementation of such change, and the provisions of sub-regulations (3), (4), (5) and (7) shall apply.

(9) In the event of a change in the particulars communicated in accordance with sub-regulations (2) and (3), the competent authority shall inform the European regulatory authority accordingly. The competent authority shall update the attestation referred to sub-regulation (4) and shall, without delay, inform the European regulatory authority of the Member State or EEA state in which the branch is established whenever there is a change in the scope of a Maltese management company's authorisation or in the details of any restriction on the types of UCITS that a Maltese management company is licensed to manage.

Freedom of establishment of Maltese management companies - services.

4. (1) A Maltese management company wishing to exercise the right to provide services in a Member State or EEA State other than Malta for the first time shall submit to the competent authority a notice containing the following information:

(a) the Member State or EEA State within the territory of which the Maltese management company intends to operate;

(b) a programme of operations stating the activities and services in terms of the Investment Services Rules which the Maltese management company intends to carry out, including a description of the risk management process implemented by the Maltese management company and a description of the procedures and arrangements implemented in accordance with the Investment Services Rules.

(2) The competent authority shall, within one month of receiving the information referred to in sub-regulation (1), forward it to the European regulatory authority of the Member State or EEA State where the Maltese management company intends to provide

services. The competent authority shall also communicate to such European regulatory authority the details of any applicable compensation scheme intended to protect investors.

(3) Where a Maltese management company intends to carry out the activity of collective portfolio management pursuant to the applicable Investment Services Rules, the competent authority shall, together with the information prescribed in sub-regulations (1) and (2), also provide the European regulatory authority of the Member State or EEA State where the Maltese management company intends to provide services with an attestation that the Maltese management company has been licensed pursuant to the provisions of the UCITS Directive, a description of the scope of the Maltese management company's authorisation and the details of any restriction on the types of UCITS that the Maltese management company is licensed to manage.

(4) Notwithstanding the provisions of regulation 6 of these regulations and regulation 4 of the Investment Services Act (Marketing of UCITS) Regulations, 2011, upon expiration of the period prescribed in sub-regulation (2), the Maltese management company may commence to provide the service or services in question in the European host Member State or EEA State.

(5) A Maltese management company which pursues activities under the freedom to provide services shall comply with the provisions of the Act, any applicable regulations made thereunder and the Investment Services Rules.

(6) Where the content of the information communicated in accordance with sub-regulation (1)(b) is amended, a Maltese management company shall give prior written notice of such amendment to the competent authority and to the European regulatory authority of the Member State or EEA State where the Maltese management company is providing services.

(7) The competent authority shall update the information contained in the attestation referred to in sub-regulation (3) and shall inform the European regulatory authority of the Member State or EEA State where the Maltese management company is providing services whenever there is a change in the scope of the Maltese management company's licence or in the details of any restriction on the types of UCITS that the Maltese management company is licensed to manage.

Activity of collective portfolio management on a cross-border basis by Maltese management companies.

5. (1) A Maltese management company which pursues the activity of collective portfolio management on a cross-border basis by establishing a branch or under the freedom to provide services shall comply with the provisions of the Act, any applicable regulations made thereunder and the Investment Services Rules and the requirements prescribed thereunder shall not be any stricter than those applicable to Maltese management companies conducting their activities only within the territory of Malta.

(2) The competent authority shall be responsible for supervising the compliance of a Maltese management company with the regulatory requirements referred to in sub-regulation (1).

(3) In addition to the requirements of sub-regulation (1), a Maltese management company which pursues the activity of collective portfolio management of a European UCITS on a cross-border basis by establishing a branch in another Member State or EEA State or in accordance with the freedom to provide services shall also comply with the applicable provisions in force in the UCITS home Member State or EEA State implementing the provisions of the UCITS Directive on the constitution and functioning of UCITS, and in particular it shall comply with the requirements applicable to:

(a) the setting up and authorisation of the UCITS;

(b) the issuance and redemption of units and shares;

(c) investment policies and limits, including calculation of total exposure and leverage;

(d) restrictions on borrowing, lending and uncovered sales;

(e) the valuation of assets and the accounting of the UCITS;

(f) the calculation of the issue price and, or redemption price and rules regarding errors in the calculation of the net asset value and related investor compensation;

(g) the distribution or reinvestment of the income;

(h) the disclosure and reporting requirements of the UCITS, including the prospectus, the key investor information and periodic reports;

(i) the arrangements made for marketing;

(j) the relationship with unit-holders;

(k) the merging and restructuring of UCITS;

(l) the winding up and liquidation of the UCITS;

(m) where applicable, the content of the unit-holder register;

(n) the licencing and supervision fees regarding the UCITS; and

(o) the exercise of unit-holders' voting rights and other unit-holders' rights in relation to paragraphs (a) to (m).

(4) A Maltese management company shall comply with the obligations set out in the prospectus and in the instruments of incorporation of the European UCITS which it manages and such documents shall be consistent with the requirements of the applicable law as referred to in sub-regulations (1) and (3).

(5) A Maltese management company shall adopt and implement all arrangements and organisational decisions necessary to ensure compliance with the applicable provisions relating to the constitution and functioning of the European UCITS. The Maltese management company shall also be responsible for compliance with the obligations set out in the prospectus and in the instruments of incorporation of the European UCITS.

(6) The competent authority shall supervise the adequacy of the arrangements and organisation of a Maltese management company in order to ensure that such Maltese management company is in a position to comply with the obligations and rules applicable to the constitution and functioning of all the European UCITS it manages.

Management of European UCITS by Maltese management companies.

6. (1) A Maltese management company which intends to manage a European UCITS shall apply to the European regulatory authority of the UCITS home Member State or EEA State and shall provide the said European regulatory authority with the following documentation:

(a) the written agreement with the custodian pursuant to the applicable Investment Services Rules; and

(b) information on delegation arrangements regarding functions of investment management and administration referred to in the Investment Services Rules:

Provided that, where the Maltese management company already manages UCITS of the same type in the same European Member State or EEA State, reference to the documentation already provided shall be sufficient.

(2) A Maltese management company shall notify any subsequent material modifications of the documentation referred to in sub-regulation (1) to the European regulatory authority of the UCITS home Member State or EEA State.

(3) In so far as necessary to enable the European regulatory authority of the UCITS home Member State or EEA State to ensure compliance with the rules for which it is responsible, the competent authority shall, upon specific request by that European regulatory authority, provide clarifications and information within ten working days of the initial request with regards to the following:

(a) the documentation referred to in sub-regulation (1); and

(b) on the basis of the attestation provided by the competent authority pursuant to regulations 3 and 4, information as to whether the type of UCITS for which authorisation is requested falls within the scope of a Maltese management company's licence.

(4) Following prior consultation with the competent authority, the European regulatory authority of the UCITS home Member State or EEA State may refuse the application of a Maltese management company to manage that UCITS only if:

(a) the Maltese management company does not comply with the fund rules applicable in the UCITS home Member State or EEA State and for which the European regulatory authority in the UCITS home Member State or EEA State is responsible to ensure compliance;

(b) the Maltese management company is not licensed by the competent authority to manage the type of UCITS for which authorisation is requested in terms of sub-regulation (1);

(c) the Maltese management company has failed to provide the European regulatory authority in the UCITS home Member State or EEA State with the documentation referred to in sub-regulation (1).

Marketing of UCITS by Maltese management companies.

7. Where a Maltese management company duly licensed proposes, without establishing a branch, only to market the units of Maltese or European UCITS it manages in a Member State or EEA State different from the UCITS home Member State or EEA State, such marketing shall be subject only to the requirements prescribed in the Investment Services Act (Marketing of UCITS of UCITS) Regulations, 2011.

Breaches by Maltese management companies.

8. (1) Where a Maltese management company which has a branch or provides services within the territory of another Member State or EEA State is in breach of the rules in force in that Member State or EEA State, the European regulatory authority of that Member State or EEA State shall require the Maltese management company to put an end to such breach. The European regulatory authority shall also notify the competent authority in writing detailing such breach.

(2) Where a Maltese management company refuses to provide the European regulatory authority of the Member State or EEA State in which it has established a branch in terms of regulation 3 or in which it provides services in terms of regulation 4, with information requested by and falling within the remit of that European regulatory authority or fails to take the necessary steps to put an end to a breach reported pursuant to sub-regulation (1), the European regulatory authority of the said Member State or EEA State shall notify the competent authority in writing. The competent authority shall, as soon as possible, take all appropriate measures to ensure that the Maltese management company provides the information requested by the European regulatory authority or remedies the breach reported by the said European regulatory authority.

(3) The competent authority shall communicate the nature of any measures taken against the Maltese management company in terms of sub-regulation (2) to the European regulatory authority concerned.

(4) Where a Maltese management company continues to refuse to provide the information requested by the European regulatory authority in the host Member State or EEA State or persists in its breaches of legal or regulatory rules despite the measures taken by the competent authority or due to the inadequacy or unavailability of such measures in Malta, the competent authority shall be notified of any measures taken by the European regulatory authority of the host Member State or EEA State against the Maltese management company.

(5) The competent authority shall consult the European regulatory authority of the host Member State or EEA State before

withdrawing the licence of the Maltese management company in accordance with the provisions of this regulation.

FREEDOM OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES BY EUROPEAN MANAGEMENT COMPANIES

Freedom of establishment of European management companies - branch.

9. (1) Where a European management company wishes to establish a branch in Malta, the following conditions shall be complied with:

(a) the European management company has provided the European regulatory authority in its home Member State or EEA State with the following documentation:

(i) a notification of its intention to establish a branch in Malta;

(ii) a programme of operations identifying the activities and services which the European management company seeks to carry on through the branch in Malta and the proposed organisational structure of the branch, including a description of the risk management process implemented by the European management company and a description of the procedures and arrangements implemented to ensure a suitable investor complaints procedure in terms of Article 15 of the UCITS Directive;

(iii) the address of the proposed branch in the territory of Malta from where documents may be obtained;

(iv) the names of those responsible for the management of the branch;

(b) the competent authority has received from the European regulatory authority of the home Member State or EEA State of the European management company:

(i) the information in paragraph (a);

(ii) details of any compensation scheme of which the European management company is a member and which is intended to protect investors;

(iii) where the European management company wishes to pursue the activity of collective portfolio management in terms of Annex II of the UCITS Directive, an attestation that the European management company has

been so authorised pursuant to the provisions of the UCITS Directive, a description of the scope of the authorisation of the European management company and details of any restriction on the types of UCITS that the European management company is authorised to manage.

(2) A European management company pursuing activities through a branch within the territory of Malta shall comply with the provisions of the Investment Services Rules on conduct of business, and the competent authority shall be responsible for supervising compliance thereof.

(3) A branch of a European management company shall not commence business in Malta unless:

(a) it has been informed by the competent authority of the applicable provisions in force in accordance with sub-regulation (1) and that it may establish the branch in Malta; or

(b) two months have elapsed from the date of receipt by the competent authority of the information and the documents referred to in sub-regulation (2) by the European authority in the home Member State or EEA State of the European management company.

(4) Where the European management company plans a change in any of the particulars referred to in sub-regulation (1)(a)(ii) to (iv), it shall give written notice of that change to the competent authority not less than one month prior to the implementation of such change, and the provisions of sub-regulation (3) shall apply.

(5) In the event of a change to any of the particulars notified to the competent authority in accordance with sub-regulation (1)(a) and (b)(ii), the competent authority shall receive notification thereof from the European regulatory authority of the home Member State or EEA State of the European management company.

(6) The competent authority shall be notified by the European regulatory authority of the European management company home Member State or EEA State whenever there is a change in the scope of the authorisation of the European management company or in the details of any restriction on the types of UCITS that a European management company is authorised to manage.

Freedom of establishment of European management companies - services.

10. (1) Where a European management company wishes to exercise the right to provide services in Malta for the first time, the following service conditions shall be complied with:

(a) the European management company has provided the European regulatory authority of its home Member State or EEA State with the following documentation:

(i) a notification of its intention to provide services in Malta;

(ii) a programme of operations stating the activities and services envisaged, including a description of the risk management process implemented by the European management company and a description of the procedures and arrangements implemented pursuant to Article 15 of the UCITS Directive;

(b) the competent authority has received from the European regulatory authority of the home Member State or EEA State of the European management company:

(i) the information in paragraph (a); and

(ii) details of any applicable compensation scheme intended to protect investors.

(2) Where a European management company wishes to pursue the activity of collective portfolio management as referred to in Annex II of the UCITS Directive, the European regulatory authority of the home Member State or EEA State of the European management company shall enclose with the documentation and information notified to the competent authority in accordance with sub-regulation (1) an attestation that the European management company has been authorised, a description of the scope of the authorisation of the European management company and details of any restriction on the types of UCITS that such company is authorised to manage.

(3) The European management company may commence to provide the service or services in respect of which it wishes to exercise the right to provide services in Malta upon receipt by the competent authority of all the documentation required in terms of sub-regulation (1).

(4) Where the content of the information communicated in accordance with sub-regulation (1)(a)(ii) is amended, a European management company shall give prior written notice of such amendment to the competent authority.

(5) The competent authority shall be informed by the European regulatory authority of the home Member State or EEA

State of the European management company whenever there is a change in the scope of the authorisation of a European management company or in the details of any restriction on the types of UCITS that a European management company is authorised to manage.

Activity of collective portfolio management on a cross-border basis by European management companies.

11. (1) A European management company which pursues the activity of collective portfolio management of a Maltese UCITS on a cross-border basis by establishing a branch in Malta or in exercise of the freedom to provide services shall comply with the Act, any applicable regulations and the Investment Services Rules, and in particular such European management company shall comply with the requirements applicable to:

(a) the setting up and licencing of the UCITS;

(b) the issuance and redemption of units and shares;

(c) investment policies and limits, including calculation of total exposure and leverage;

(d) restrictions on borrowing, lending and uncovered sales;

(e) the valuation of assets and the accounting of the UCITS;

(f) the calculation of the issue or redemption price and rules regarding errors in the calculation of the net asset value and the related investor compensation;

(g) the distribution or reinvestment of income;

(h) the disclosure and reporting requirements of the UCITS, including the prospectus, the key investor information and periodic reports;

(i) the arrangements made for marketing;

(j) the relationship with unit-holders;

(k) the merging and restructuring of UCITS;

(l) the winding up and liquidation of the UCITS;

(m) where applicable, the content of the unit-holder register;

(n) the licencing and supervision fees regarding the UCITS; and

(o) the exercise of unit-holders' voting rights and other unit-holders' rights in relation to paragraphs (a) to (m).

(2) A European management company shall comply with the obligations set out in the prospectus and in the instruments of incorporation of the Maltese UCITS which it wishes to manage. Such documents shall be consistent with the requirements referred to in sub-regulation (1).

(3) The competent authority shall be responsible for supervising compliance of the European management company with the requirements of sub-regulations (1) and (2).

(4) A European management company shall adopt and implement all the arrangements and organisational decisions necessary to ensure compliance with the applicable provisions relating to the constitution and functioning of the Maltese UCITS. The European management company shall also be responsible for compliance with the obligations set out in the prospectus and in the instruments of incorporation of the Maltese UCITS.

(5) A European management company duly authorised in its home Member State or EEA State in terms of the UCITS Directive shall not be subject to any additional requirements applicable in Malta in respect of the subject matter of the UCITS Directive, except in the cases expressly specified by the UCITS Directive.

Management of Maltese UCITS by European management companies.

12. (1) A European management company which intends to manage a Maltese UCITS shall provide the competent authority with the following documentation:

(a) the written agreement with the custodian in accordance with the applicable Investment Services Rules; and

(b) information on the delegation arrangements regarding the functions of investment management and administration in accordance with the applicable Investment Services Rules:

Provided that, where a European management company already manages other Maltese UCITS of the same type, reference to the documentation already provided to the competent authority shall be sufficient.

(2) The European management company shall notify any subsequent material modifications of the documentation referred to in sub-regulation (1) to the competent authority.

(3) In so far as necessary to ensure compliance with the rules for which it is responsible, the competent authority may ask the European regulatory authority of the home Member State or EEA State of the European management company for clarifications and information with regards to the following:

(a) the documentation referred to in sub-regulation (1); and

(b) on the basis of the attestation provided by the European regulatory authority of the European management company home Member State or EEA State pursuant to regulations 9 and 10, information as to whether the type of UCITS for which authorisation for management is requested falls within the scope of the authorisation of the European management company.

(4) The competent authority may refuse the application of a European management company to manage a Maltese UCITS only if:

(a) the European management company does not comply with the provisions of regulation 11;

(b) the European management company is not authorised by the European regulatory authority of its home Member State or EEA State to manage the type of UCITS for which the authorisation is being requested; or

(c) the European management company has failed to provide the competent authority with the documentation referred to in sub-regulation (1).

(5) The competent authority shall consult with the European regulatory authority of the European management company home Member State or EEA State prior to refusing an application.

Reporting to the competent authority.

13. (1) The competent authority may, for statistical purposes, require a European management company which has established a branch in Malta in terms of these regulations, to report periodically on its activities in Malta.

(2) The competent authority may require a European management company pursuing business in Malta through the establishment of a branch or under the freedom to provide services, to provide the information necessary for the monitoring of its compliance with the applicable provisions for which it is responsible in terms of the Act, any applicable regulations issued thereunder and the Investment Services Rules.

(3) The requirements prescribed in sub-regulation (2) shall not be more stringent than those which the competent authority would impose on Maltese management companies for the monitoring of their compliance with the same standards.

(4) A European management company which provides collective portfolio management on a cross-border basis to a Maltese UCITS pursuant to the provisions of these regulations shall ensure that the procedures and arrangements implemented by the said European management company pursuant to the applicable provisions of the Investment Services Rules on investor complaints shall be such as to enable the competent authority to obtain, directly from the European management company, the information referred to in this regulation.

Breaches by European management companies.

14. (1) Where a European management company which has a branch or provides services in Malta is in breach or is likely to breach the provisions of the Act or of any regulations or Investment Services Rules made thereunder, the competent authority shall require, in writing, the European management company concerned to put an end to the breach and shall inform the European regulatory authority of the European management company home Member State or EEA State of such request.

(2) Where the European management company concerned refuses to provide the competent authority with the information falling under its responsibility or fails to take the necessary steps to put an end to the breach referred to in sub-regulation (1), the competent authority shall inform the European regulatory authority of the European management company home Member State or EEA State accordingly.

(3) Where a European management company continues in its refusal to provide information requested by the competent authority in terms of regulation 13 or persists in its breach of legal or regulatory requirements despite the measures taken by the European regulatory authority of the European management company home Member State or EEA State or due to the inadequacy or unavailability of such measures in the said Member State or EEA State, the competent authority may take either of the following actions:

(a) after informing the European regulatory authority of the European management company home Member State or EEA State, take appropriate measures, including measures under articles 13 to 16B of the Act in order to prevent or penalize further irregularities and, in so far as necessary, to prevent that European management company from initiating

any further transactions in Malta; or

(b) where it considers that the European regulatory authority of the European management company home Member State or EEA State has not acted adequately, refer the matter to ESMA.

(4) The competent authority shall ensure that it is possible to serve the legal documents necessary in order to enforce the aforementioned measures.

(5) Where the service provided within the territory of Malta is the management of a Maltese UCITS, the competent authority may require the European management company to cease managing that Maltese UCITS.

(6) The competent authority shall inform the European regulatory authority of the European management company home Member State or EEA State of any measures taken pursuant to sub-regulation (3) and which involve measures and penalties or restrictions on the activities of the European management company concerned.

(7) Any action taken pursuant to sub-regulations (2), (3) and (5) involving measures or penalties shall be properly justified and communicated to the European management company concerned.

(8) In cases where following the procedure outlined in this regulation would result in delays that could prejudice the interests of investors and others for whom services are provided, the competent authority may, prior to initiating such procedure, take any precautionary measures it may deem necessary:

Provided that, ESMA, the European Commission and the European regulatory authorities of all other Member States or EEA States concerned shall be informed of such measures as soon as possible.

(9) The competent authority shall take all appropriate measures to safeguard the interests of investors. Such measures may include decisions preventing a European management company from initiating any further transactions within the territory of Malta.

(10) A European management company shall have a right to appeal to the Financial Services Tribunal in terms of the Act from a decision of the competent authority to take measures in accordance with sub-regulation (3).

15. The competent authority shall inform ESMA and the European Commission of the number and type of cases of refusal in terms of regulations 3 and 12 and of any measures taken in accordance with regulation 14(3) and (4). Notification by the competent authority.

CO-OPERATION WITH EUROPEAN REGULATORY AUTHORITIES IN OTHER EUROPEAN MEMBER STATES OR EEA STATES

16. (1) The competent authority shall provide the European regulatory authorities of other Member States or EEA States with all information concerning the management and ownership of a Maltese management company which is likely to facilitate its supervision as well as any other information which is likely to facilitate the monitoring of such Maltese management company. Further, the competent authority shall also cooperate with the European regulatory authorities in other Member States or EEA States in order to ensure that such European regulatory authorities collect the information required in terms of regulation 13(2) to (4). Co-operation with European regulatory authorities.

(2) The competent authority shall notify the European regulatory authority of a UCITS home Member State or EEA State without delay of any problems identified in a Maltese management company which may materially affect the ability of such Maltese management company to perform its duties properly with respect to that UCITS or of any breach of the requirements prescribed under these regulations.

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