VERŻJONI ELETTRONIKA

Suppliment tal-Gazzetta tal-Gvern ta' Malta Nru. 18,910, 4 ta' Mejju, 2012
Taqsima B

L.N. 133 of 2012

INVESTMENT SERVICES ACT (CAP. 370)

Investment Services Act (Capital Adequacy) (Amendment) Regulations, 2012

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

Citation and commencement.

1. (1) The title of these regulations is the Investment Services Act (Capital Adequacy) (Amendment) Regulations, 2012 and these regulations shall be read and construed as one with the Investment Services Act (Capital Adequacy) Regulations, hereinafter referred to as "the principal regulations". S.L. 370.15

(2) The purpose of these regulations is to transpose sub-articles (3)(a), (4) and (5) of Article 10 of Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).

Amends regulation 11 of the principal regulations.

2. In sub-regulation (2) of regulation 1 of the principal regulations, for the words "The objective of these regulations is to implement articles 36 and 38 of the Capital Adequacy Directive", there shall be substituted the words, "The objective of these regulations is to implement the second paragraph of sub-article (1) of Article 22, and Articles 36 and 38 of the Capital Adequacy Directive".

Amends regulation 2 of the principal regulations.

3. Regulation 2 of the principal regulations shall be amended as follows:

(a) in sub-regulation (1) thereof:

(i) the definition "the Directive" shall be deleted; and

VERŻJONI ELETTRONIKA

(ii) immediately after the definition "Capital Adequacy Directive", there shall be added the following new definitions:

" "EBA" means the European Banking Authority established by Regulation (EU) No. 1093/2010 of the European Parliament and of the Council of 24 November 2010;

"MiFID 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."; and

(b) sub-regulation (2) thereof shall be substituted by the following new sub-regulation:

"(2) Words and expressions used in these regulations which are also used in the Act shall have the same meaning assigned to them in the Act.".

Amends regulation 4 of the principal regulations.

4. In regulation 4 of the principal regulations, immediately after the words, "shall be the Malta Financial Services Authority established by the Malta Financial Services Authority Act.", there shall be added the words "The Malta Financial Services Authority shall inform the EBA and the European Commission that it is the authority designated in terms of this regulation.".

Amends regulation 5 of the principal regulations.

Regulation 5 of the principal regulations shall be amended as follows:

(a) in paragraph (b) of sub-regulation (1) thereof, for the words, "laid down in the Directive", there shall be substituted the words, "laid down in the Capital Adequacy Directive"; and

(b) in sub-regulation (2) thereof, for the words, "articles 54 and 58 of the Directive", there shall be substituted the words "article 54 and 58 of the MiFID Directive".

VERŻJONI ELETTRONIKA

6. Immediately after regulation 5 of the principal regulations, there shall be added the following new regulations: Adds new regulations to the principal regulations.

"Cooperation with the EBA.

6. (1) The competent authority shall cooperate with the EBA for the purposes of the Capital Adequacy Directive, in accordance with Regulation (EU) No. 1093/ 2010 of the European Parliament and of the Council of the 24 November 2010.

(2) The competent authority shall without delay provide the EBA with all information necessary to carry out its duties under the Capital Adequacy Directive and under Regulation (EU) No 1093/2010, in accordance with Article 35 of the said Regulation.

Notifications by the competent authority to the EBA, the Council of the European Union and the European Commission.

7. The competent authority shall notify the EBA, the Council of the European Union, and the European Commission of those procedures established by the competent authority to prevent licence holders from deliberately avoiding the additional capital requirements that they would otherwise incur, on exposures exceeding the limits laid down in Article 111(1) and (2) of Directive 2006/48/EC of the European Parliament and of the Council of 14 June, 2006 relating to the taking up and pursuit of the business of credit institutions (recast), once those exposures have been maintained for more than ten days, by means of temporarily transferring the exposures in question to another company, whether within the same group or not, and, or by undertaking artificial transactions to close out the exposure during the ten day period and create a new exposure.".

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