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L.N. 81 of 2013

FINANCIAL MARKETS ACT (CAP. 345)

Financial Markets Act (OTC Derivatives, Central Counterparties and Trade Repositories) Regulations, 2013

IN exercise of the powers conferred by article 49 of the Financial Markets Act, the Minister of Finance, the Economy and Investment, acting on the advice of the Malta Financial Services Authority, has made the following regulations:-

Citation, scope and commencement.

1. (1) The title of these regulations is the Financial Markets Act (OTC Derivatives, Central Counterparties and Trade Repositories) Regulations, 2013.

(2) The purpose of these regulations is to create a registration framework for OTC Derivatives, central counterparties and trade repositories and, in part, to implement the relevant provisions of the EMIR Regulation on OTC derivatives, central counterparties and trade repositories as herein defined, and they shall be interpreted and applied accordingly.

(3) Regulations 3 to 9 shall come into force on such date as the Minister may establish by order in the Gazette.

Definitions.

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

"the Act" means the Financial Markets Act; Cap. 345.

"central counterparty" means a legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer;

"EMIR Regulation" means Regulation (EU) No 648/2012 of the European Parliament and of the Council of the 4th July, 2012 on OTC derivatives, central counterparties and trade repositories as amended from time to time;

"Financial Services Tribunal" means the tribunal established in terms of article 21 of the Malta Financial Services Authority Act; Cap. 330.

"OTC derivative" means a derivative contract the execution of which does not take place on a regulated market or on a third country

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market considered as equivalent to a regulated market in accordance with article 19(6) of Directive 2004/39/EC on markets in financial instruments, as amended;

"proposed acquirer" means any natural or legal person or persons acting in concert, who have taken a decision either to acquire, directly or indirectly, a qualifying holding in a central counterparty or to further increase, directly or indirectly, such a qualifying holding in a central counterparty as a result of which the proportion of the voting rights or of the capital held would reach or exceed 10%, 20%, 30% or 50% or so that the central counterparty would become its subsidiary;

"trade repository" means a legal person that centrally collects and maintains the records of derivatives.

(2) Words and expressions used in the Act shall, in these regulations, have the same meaning as is assigned to them in the Act

Competent authority. Cap. 330.

3. The Malta Financial Services Authority established by the Malta Financial Services Authority Act shall be the designated competent authority in Malta for the purposes of implementing the relevant provisions of the EMIR Regulation, and any reference in these regulations to the competent authority shall be read and construed accordingly.

Applicability of the EMIR Regulation to the competent authority.

4. (1) The competent authority shall exercise all the functions, obligations and powers and shall satisfy all the requirements imposed on competent authorities by the EMIR Regulation.

(2) Without prejudice to sub-regulation (1), the competent authority may, for the better implementation of the EMIR Regulation, exercise any of the powers assigned to it under the Act in relation to persons acting as central counterparties or trade repositories and, or who are responsible for clearing and bilateral risk-management requirements for OTC derivatives and, or who are responsible for reporting requirements for derivative contracts.

Registration of central counterparties.

5. (1) No person shall operate a central counterparty in or from Malta, or shall provide, or hold itself out to be or provide the services of a central counterparty in Malta unless such person has been granted a registration for this purpose issued by the competent authority in terms of this regulation.

(2) An application for registration to operate a central counterparty in terms of sub-regulation (1) shall be made to the competent authority in writing and shall be accompanied by such documents as the competent authority may specify.

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(3) The competent authority shall not grant registration to operate a central counterparty in terms of sub-regulation (1) unless it is satisfied that the applicant or applicants are fit and proper persons and are in a position to comply with any conditions which the competent authority may deem fit to impose.

Withdrawal of registration.

6. The competent authority shall not register, and it shall withdraw a registration issued under regulation 5, as the case may be, where:

(a) the holder thereof is not fit and proper to act as a central counterparty;

(b) the holder thereof does not fulfil the requirements of registration, or has contravened any of the conditions of registration;

(c) the holder thereof, or a person acting on its behalf, has furnished the competent authority with information which is false, inaccurate or misleading;

(d) registration has been obtained through false statements or by other irregular means; or

(e) at the request of the holder thereof.

Authorization in terms of the Central Bank of Malta Act or any other law. Cap. 204.

7. Nothing in these regulations shall be construed as enabling or empowering a central counterparty to perform a function or activity which requires an approval or authorisation in terms of the Central Bank of Malta Act.

Financial Market Rules.

8. For the better carrying out of the provisions of the EMIR Regulation and of these regulations, the competent authority may, from time to time, issue and publish Financial Market Rules which shall be binding on all persons acting as central counterparties or trade repositories and, or who are responsible for clearing and bilateral risk-management requirements for OTC derivatives and, or who are responsible for reporting requirements for derivative contracts. Such rules may lay down additional requirements and conditions in relation to these matters as the competent authority may consider appropriate including:

(a) the operation of the EMIR Regulation or of these regulations;

(b) any matter relating to the functions, obligations and powers of the competent authority under the EMIR Regulation; and

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(c) any other matter arising in connection with the EMIR Regulation or these regulations.

Applicability of the EMIR Regulation to certain persons.

9. The provisions of the EMIR Regulation shall apply to persons acting as central counterparties or trade repositories and, or who are responsible for clearing and bilateral risk-management requirements for OTC derivatives and, or who are responsible for reporting requirements for derivative contracts in or from Malta and such persons shall exercise all the obligations and satisfy all the requirements imposed on such persons by the said EMIR Regulation.

Publication of reasons for refusal.

10. For the purposes of article 31(5) of the EMIR Regulation, the competent authority may, whether or not at the request of the proposed acquirer in a central counterparty, issue a public statement indicating the reasons as to why it has refused the proposed acquisition of the central counter party requested by the proposed acquirer.

Administrative penalties.

11. Where a person acting as a central counterparty or trade repository and, or who is responsible for clearing and bilateral risk-management requirements for OTC derivatives and, or who is responsible for reporting requirements for derivative contracts contravenes or fails to comply with any provisions of the EMIR Regulation, these regulations and any Financial Markets Rules issued thereunder, the competent authority may, by notice in writing and without recourse to a court hearing, impose on such person an administrative penalty not exceeding one hundred and fifty thousand euro (€150,000).

Appeals.

12. A right of appeal to the Financial Services Tribunal shall lie from a decision of the competent authority to impose a penalty under regulation 11.

EMIR Regulations to prevail in case of any inconsistency.

13. Upon the coming into force of Title III of the EMIR Regulation, these regulations shall be construed and applied in accordance therewith and, insofar as the provisions of these regulations are inconsistent with the provisions of the said EMIR Regulation, the provisions of the EMIR Regulation shall prevail and the provisions of these regulations shall not apply to the extent of the inconsistency.

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