VERŻJONI ELETTRONIKA

Suppliment tal-Gazzetta tal-Gvern ta' Malta, Nru. 19,198, 24 ta' Jannar, 2014
Taqsima B

L.N. 30 of 2014

INVESTMENT SERVICES ACT (CAP. 370)

Investment Services Act (Supervisory Review) Regulations, 2013

IN exercise of the powers conferred by article 12 of the Investment Services Act and article 20D of the Malta Financial Services Authority Act, the Minister for Finance, acting on the advice of the Malta Financial Services Authority, has made the following regulations:-

Citation and purpose.

1. (1) The title of these regulations is the Investment Services Act (Supervisory Review) Regulations, 2013.

(2) The purpose of these regulations is to implement articles 3 (in part), 4(1), 6, 7, 50, 52, 53(2), 56, 57, 58(1), 58 (3), 59, 60, 61, 74(4), 75(1), 75(3), 77(2), 78(2), 78(3), 78(4), 78(5), 86(3), 91(6), 91(11), 97, 98, 99, 100 to 105 inclusive, 107, 110, 143, 144, 151, 157, 159 of the CRD.

Interpretation.

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

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

"CRD" means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

"credit institution" means a person licensed in terms of the Banking Act, whose head office is in Malta or an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account, authorised by a European Regulatory Authority in terms of the CRD or authorised by a European regulatory authority in an EEA Member State; Cap. 371.

"CRR" means Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation Mi FIDU) No. 648/2012, as amended from time

to time, and includes any implementing measures that have been or may be issued thereunder;

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

"EIOPA" means the European Insurance and Occupational Pensions Authority as established by Regulation (EU) No. 1093/2010 of the European Parliament and of the Council of 24 November, 2010 establishing a European Supervisory Authority;

"ESCB central banks" shall have the same meaning as that assigned to it in point 45 of Article 4(1) of the CRR;

"ESFS" means European System of Financial Supervision;

"ESRB" means the European Systemic Risk Board established by regulation EU No. 1092/2010;

"European investment firm" means a firm as defined in article 4(1)(2) of the CRR, authorised by its European regulatory authority within the meaning of Article 5 of the MiFID Directive, or authorised by a European regulatory authority in an EEA State;

"home member state" means

(a) in the case of an investment firm, within the meaning of these regulations, Malta;

(b) in the case of a "European investment firm", within the meaning of these regulations, the Member State where such European investment Firm is authorised by its European regulatory authority;

"host member state" means a Member State or an EEA State where an investment firm has established a branch or provides services on a cross border basis in terms of the European Passport Rights for Investment Firms Regulations; S.L. 370.10

"investment firm" means a person who holds an investment services licence issued by the competent authority under the Act, and which is subject to the requirements of the CRD;

"third country" means a country which is not a Member State or an EEA State.

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

Designation and powers of the competent authority. Cap. 330.

3. (1) 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 CRD and the CRR and any reference in these regulations to the competent authority shall be read and construed accordingly.

(2) The competent authority shall exercise all the functions, obligations and powers pursuant to the CRD and the CRR and shall satisfy all the requirements imposed on competent authorities by the CRD and the CRR.

Co-operation within the European system of financial supervision.

4. In the exercise of its duties, the competent authority shall take into account the convergence in respect of supervisory tools and supervisory practices in the application of the laws, regulations and administrative requirements adopted pursuant to the CRD and the CRR. For that purpose, the competent authority:

(a) as party to the ESFS shall cooperate with trust and full mutual respect, in particular when ensuring the flow of appropriate and reliable information between the other parties to the ESFS in accordance with the principle of sincere cooperation set out in Article 4(3) of the Treaty on European Union;

(b) shall participate in the activities of the EBA and, as appropriate, in the colleges of supervisors;

(c) shall make every effort to comply with those guidelines and recommendations issued by the EBA in accordance with Article 16 of Regulation (EU) No. 1093/2010 and to respond to the warnings and recommendations issued by the ESRB pursuant to Article 16 of Regulation (EU) No. 1092/2010;

(d) shall cooperate closely with the ESRB;

(e) shall not be inhibited by other national legislative provisions in the performance of its duties as member of the EBA and the ESRB, or its duties under the CRD and the CRR.

Union dimension of supervision.

5. The competent authority shall, in the exercise of its general duties, duly consider the potential impact of its decisions on the stability of the financial system in the other Member States concerned

and, in particular, in emergency situations, based on the information available at the relevant time.

Collaboration concerning supervision.

6. (1) The competent authority shall collaborate closely with European regulatory authorities in order to supervise the activities of investment firms and operating in particular through a branch, in one or more Member States other than Malta. The competent authority shall supply all information concerning the management and ownership of such investment firms to the relevant European regulatory authorities in the Member States concerned, that is likely to facilitate their supervision and the examination of the conditions for their licensing, and all information likely to facilitate the monitoring of investment firms, in particular with regard to liquidity, solvency, the limiting of large exposures, other factors that may influence the systemic risk posed by the investment firm, administrative and accounting procedures and internal control mechanisms.

(2) The competent authority shall provide the European regulatory authorities of the host Member State immediately with any information and findings pertaining to liquidity supervision in accordance with Part Six of the CRR and the Supervisory Consolidation Regulations, 2013, of the activities performed by an investment firm through its branches, to the extent that such information and findings are relevant to the protection of investors in the host Member State.

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(3) The competent authority shall inform the European regulatory authorities of all the investment firms' host Member States immediately where liquidity stress occurs or can reasonably be expected to occur. That information shall also include details about the planning and implementation of a recovery plan and about any prudential supervisory measures taken in that context.

(4) (a) Where Malta is the home member state of the investment firm, the competent authority shall communicate and explain upon request to the European regulatory authorities of the host Member State of that investment firms' branch, how information and findings provided by the latter have been taken into account.

(b) Where the competent authority disagrees with the measures to be taken by the European regulatory authority of the host Member State in relation to the information and findings referred to in paragraph (a), the competent authority may refer the matter to the EBA and request its assistance in accordance with Article 19 of Regulation (EU) No. 1093/2010.

(c) Where Malta is the host member state of a branch belonging to a European investment firm and the competent authority, following communication by the European regulatory authority of the said European investment firm, of information and findings relating to the said European investment firm, maintains that no appropriate measures have been taken by the said European regulatory authority, the competent authority may, after informing the European regulatory authority concerned and the EBA, take appropriate measures to prevent further breaches in order to protect the interests of investors and others to whom services are provided or to protect the stability of the financial system.

(5) The competent authority may refer to the EBA situations where a request for collaboration to a European regulatory authority, in particular to exchange information, has been rejected or has not been acted upon within a reasonable time.

(6) The competent authority may exchange information with the bodies listed and in the manner specified in Schedule V for the better carrying out of its supervisory functions in accordance with the CRD and the CRR:

Provided that the information received or exchanged by the competent authority or by its officers, employees or agents as well as inspectors, auditors and experts engaged by the competent authority, from the bodies listed in the said Schedule, shall be treated as confidential and protected by the duty of professional secrecy.

On the spot checks and inspection of branches in another Member State.

7. (1) Where a European investment firm carries out its activities through a branch in Malta, the competent authority may permit the European regulatory authority of the home Member State concerned, after it has notified the competent authority, to carry out, itself or through an intermediary appointed for that purpose, on-the-spot checks of the information referred to in regulation 6 and inspections of such branches.

(2) For the purposes of sub-regulation (1), the European regulatory authority may request the competent authority to carry out the on-the-spot checks referred to in the said sub-regulation on its behalf, in accordance with the procedures set out in regulation 12 of the Supervisory Consolidation Regulations, 2013. L.N. of 2013.

(3) The competent authority may carry out, on a case-by-case basis, on-the-spot checks and inspections of the activities carried out by branches of European investment firms in Malta and require information from a branch about its activities and for supervisory purposes, where it considers it relevant for reasons of stability of the

financial system in Malta. Before carrying out such checks and inspections, the competent authority shall consult the European regulatory authority of the home Member State concerned.

(4) On-the-spot checks and inspections of branches when carried out in Malta shall be conducted in accordance with the laws of Malta.

(5) After the checks and inspections referred to in sub-regulation (4), the competent authority shall communicate to the European regulatory authority of the home Member State, the information obtained and findings that are relevant for the risk assessment of the investment firm or the stability of the financial system in Malta.

(6) When determining the supervisory examination programme referred to in regulation 13, the competent authority shall duly take into account the information and findings provided by the European regulatory authority of a host Member State pursuant to its on-the-spot checks and inspections of the activities carried out by branches of investment firms, and shall also have regard to the stability of the financial system in the host Member State concerned:

Provided that the European regulatory authority may also, for the purposes of the inspection of branches, have recourse to one of the other procedures set out in regulation 12 of the Supervisory Consolidation Regulations, 2013.

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Recovery and resolution plans.

8. (1) The competent authority shall ensure that an investment firm has in place an appropriate recovery plan for the restoration of that firm's financial situation following a significant deterioration, and that such restoration plans are put into place, as well as the relevant resolution plans.

(2) The requirements for an investment firm to draw up, maintain and update recovery plans and for the resolution authority to prepare resolution plans after consultation with the competent authority, may be reduced if, after consultation with the Central Bank of Malta, the competent authority considers that the failure of a specific investment firm due, *inter alia*, to its size, to its business model, to its inter-connectedness to other institutions, or to the financial system in general, will not have a negative effect on the financial markets, o1stn other investment firms or on funding conditions.

(3) The competent authority shall inform the EBA in advance of the meetings relating to the development and coordination of recovery and resolution plans so as to enable the EBA to fully

participate in and contribute to the development and coordination of effective and consistent recovery and resolution plans. The competent authority shall inform the EBA of the main issues to be discussed during the meetings and of the activities to be considered.

Oversight of remuneration.

9. (1) The competent authority shall collect the information disclosed publicly by investment firms in relation to points (g), (h) and (i) of Article 450(1) of the CRR and shall use it to benchmark remuneration trends and practices and shall provide this information to the EBA.

(2) The competent authority shall collect information on the number of natural persons per investment firm that are remunerated EUR 1 million or more per financial year, in pay brackets of €1 million, including data on their work responsibilities, the business area involved and the main elements of their salary, including bonuses, long-service awards and pension contributions, and shall forward this information to the EBA.

Supervisory benchmarking of internal approaches.

10. (1) Where the competent authority chooses to develop specific portfolios of internal approaches permitted to be used by investment firms, it shall do so in consultation with the EBA and shall ensure that investment firms report the results of the calculations for these specific portfolios separately from the results of the calculations for the benchmark portfolios required under Article 78 of the CRD.

(2) The competent authority shall, on the basis of the information submitted by investment firms, monitor the range of risk weighted exposure amounts or own funds requirements, as applicable, except for operational risk, for the exposures or transactions in the benchmark portfolio resulting from the internal approaches of those investment firms. The competent authority shall make an assessment at least annually of the quality of those approaches paying particular attention to:

(a) those approaches that exhibit significant differences in own fund requirements for the same exposure;

(b) approaches where there is particularly high or low diversity, and also where there is a significant and systematic under-estimation of own funds requirements.

(3) Where particular investment firms diverge significantly from the majority of their peers or where there is little commonality in approach leading to a wide variance of results, the competent authority shall investigate the reasons therefor and, if it can be clearly identified that an investment firm's approach leads to an underestimation of own funds requirements which is not attributable

to differences in the underlying risks of the exposures or positions, the competent authority shall take corrective action.

(4) The competent authority shall ensure that its decisions on the appropriateness of corrective actions as referred to in sub-regulation (3) comply with the principle that such actions must maintain the objectives of an internal approach and therefore do not:

(a) lead to standardisation or preferred methods;

(b) create wrong incentives; or

(c) cause herd behaviour.

Supervisory review and evaluation.

11. (1) The competent authority shall, taking into account the technical criteria set out in Schedule I, review the arrangements, strategies, processes and mechanisms implemented by investment firms to comply with the CRR, the Act, regulations or Investment Services Rules issued thereunder and evaluate:

(a) risks to which investment firms are or might be exposed;

(b) risks that an investment firm poses to the financial system taking into account the EBA's technical criteria for the identification and measurement of systemic risk in terms of Article 23 of Regulation (EU) No. 1093/2010, or recommendations of the ESRB, where appropriate; and

(c) risks revealed by stress testing taking into account the nature, scale and complexity of an investment firm's activities.

(2) The scope of the review and evaluation referred to in sub-regulation (1) shall cover all requirements of the CRR, the Act, regulations or Investment Services Rules issued thereunder.

(3) On the basis of the review and evaluation referred to in sub-regulation (1), the competent authority shall determine whether the arrangements, strategies, processes and mechanisms implemented by investment firms and the own funds and liquidity held by them ensure a sound management and coverage of their risks.

(4) The competent authority shall establish the frequency and intensity of the review and evaluation referred to in sub-regulation (1) having regard to the size, systemic importance, nature, scale and complexity of the activities of the investment firm concerned and taking into account the principle of proportionality. The review and

evaluation shall be updated at least on an annual basis for investment firms covered by the supervisory examination programme referred to in regulation 13.

(5) Where a review shows that an investment firm may pose systemic risk in accordance with the EBA's technical criteria for the identification and measurement of systemic risk established in terms of Article 23 of Regulation (EU) No. 1093/2010, the competent authority shall inform the EBA without delay about the results of the review.

Criteria for supervisory review and evaluation.

12. In carrying out its supervisory review and evaluation the competent authority shall apply the technical and other criteria set out in Schedule I.

Supervisory examination programme.

13. The competent authority shall adopt an annual supervisory examination programme for the investment firms it supervises. Such programme shall take into account the supervisory review and evaluation process referred to in regulation 11, and shall contain the elements set out in Schedule II.

Supervisory stress testing.

14. The competent authority shall carry out as appropriate but at least annually, supervisory stress tests on investment firms it supervises, to facilitate the review and evaluation process under regulation 11.

Ongoing review of permission to use internal approaches.

15. (1) The competent authority shall review on a regular basis, and at least every three years, investment firms' compliance with the requirements regarding approaches that require permission by the competent authority for the calculation of own funds requirements in accordance with Part Three of the CRR. In this regard it shall take cognizance of changes in an investment firm's business and to the implementation of those approaches to new products. Where material deficiencies are identified in risk capture by an investment firm's internal approach, the competent authority shall ensure they are rectified or take appropriate steps to mitigate their consequences, including by imposing higher multiplication factors, or imposing capital add-ons, or taking other appropriate and effective measures.

(2) The competent authority shall in particular review and assess whether the investment firm uses well developed and up-to-date techniques and practices for those approaches.

(3) If for an internal market risk model numerous overshootings as referred to in Article 366 of the CRR indicate that the model is not or is no longer sufficiently accurate, the competent authority shall revoke the permission for using the internal model or

impose appropriate measures to ensure that the model is improved promptly.

(4) If an investment firm has received permission from the competent authority to apply an approach for the calculation of own funds requirements in accordance with Part Three of the CRR but no longer meets the requirements for applying that approach, the competent authority shall require the investment firm to either demonstrate to the satisfaction of the competent authority that the effect of non-compliance is immaterial, where applicable in accordance with the requirements of the CRR, or present a plan for the timely restoration of compliance with the requirements and set a deadline for its implementation. The competent authority shall require improvements to that plan if it is unlikely to result in full compliance or if the deadline is inappropriate. If the investment firm is unlikely to be able to restore compliance within an appropriate deadline and, where applicable, has not satisfactorily demonstrated that the effect of non-compliance is immaterial, the permission to use the approach shall be revoked or limited to compliant areas or those where compliance can be achieved within an appropriate deadline.

(5) The competent authority shall take into account the analysis carried out by the EBA in terms of Article 101(5) of the CRD and the guidelines containing benchmarks on the basis of that analysis issued by the EBA, for the review of the permissions it grants to investment firms to use internal approaches for the calculations of own funds requirements.

Supervisory measures.

16. (1) The competent authority shall require an investment firm to take the necessary measures at an early stage to address relevant problems in circumstances where:

(a) the investment firm does not meet the requirements of the Act, regulations or Investment Services Rules issued thereunder, transposing the requirements of the CRD or of the CRR;

(b) the competent authority has evidence that the investment firm is likely to breach the Act, regulations or Investment Services Rules issued thereunder, or the provisions of the CRR, within the following twelve months.

(2) For the purposes of sub-regulation (1), the powers of the competent authority shall include those contained in Schedule III.

Application of supervisory measures to institutions with similar risk profiles.

17. (1) Where the competent authority determines that investment firms with similar risk profiles such as similar business models or geographical location of exposures, are or might be exposed to similar risks or pose similar risks to the financial system or cause or contribute to systemic risk, it may apply the supervisory review and evaluation process referred to in regulation 11, to those investment firms in a similar or identical manner and the competent authority shall notify the EBA accordingly.

(2) For this purpose, the competent authority shall have the necessary legal power to impose the requirements under the CRD and under the CRR on the investment firms referred to in sub-article (1) in a similar or identical manner, including in particular the exercise of supervisory powers contained in Schedule III, regulation 18 and Investment Services Rules transposing the requirements of Article 106 of the CRD.

(3) The type of investment firms referred to in sub-regulation (1) may be determined in accordance with the criteria referred to in paragraph (1)(j) of Schedule I.

Specific liquidity requirements.

18. (1) For the purposes of determining the appropriate level of liquidity requirements on the basis of the review and evaluation carried out in accordance with these regulations, the competent authority shall assess whether any imposition of a specific liquidity requirement is necessary to capture liquidity risks to which an investment firm is or might be exposed, taking into account the following:

(a) the particular business model of the investment firm;

(b) the investment firm's arrangements, processes and mechanisms in relation to liquidity risk as referred to in the Investment services Rules and these regulations;

(c) the outcome of the review and evaluation carried out in accordance with regulation 11;

(d) systemic liquidity risk that threatens the integrity of the financial markets in Malta.

(2) In particular, without prejudice to the provisions of the Act, the regulations and the Investment Services Rules transposing the requirements of Article 67 of the CRD, the competent authority will consider the need to apply administrative penalties or other administrative measures, including prudential charges, proportionate to the disparity between the actual liquidity position of an investment

firm and any liquidity and stable funding requirements established by the competent authority or at European Union level.

(3) The competent authority shall monitor developments in relation to liquidity risk profiles, for example, product design and volumes, risk management, funding policies and funding concentrations.

(4) The competent authority shall take effective action where developments referred to in sub-regulation (2) may lead to systemic instability or instability of the investment firm itself.

(5) The competent authority shall inform the EBA about any actions carried out pursuant to sub-regulation (3).

Notification to EBA by the competent authority.

19. The competent authority shall inform the EBA of:

(a) the functioning of its review and evaluation process referred to in regulation 11;

(b) the methodology used to reach decisions in relation to the technical criteria for supervisory review contained in Schedule I, the supervisory stress testing in regulation 14, the review of internal approaches in regulation 15, the supervisory measures in regulation 16, the supervisory powers contained in Schedule III and the specific liquidity requirements in regulation 18, when engaging in this process.

Review and evaluation and application of supervisory measures.

20. (1) The competent authority shall apply the review and evaluation process and the supervisory measures referred to in these regulations in accordance with the level of application of the requirements of Part One, Title II of the CRR.

(2) Where the competent authority waives the application of own funds requirements on a consolidated basis as provided for in Article 15 of the CRR, the requirements of regulation 11 shall apply to the supervision of investment firms on an individual basis.

Publication.

21. (1) The competent authority shall publish the following information in accordance with the Commission technical standards adopted:

(a) the texts of laws, regulations, administrative rules and general guidance adopted in Malta in the field of prudential regulation;

(b) the general criteria and methodologies it uses in the review and evaluation pursuant to regulation 11;

(c) the manner of exercise of the options and discretions available in European Union law;

(d) without prejudice to the confidentiality provisions of the Act, aggregate statistical data on key aspects of the implementation of the prudential framework in Malta, including the number and nature of supervisory measures taken and of administrative penalties imposed in terms of the Act.

(2) The information published in accordance with sub-regulation (1) shall be sufficient to enable a meaningful comparison of the approaches adopted by the European regulatory authorities. The disclosures shall be published following a common format and updated regularly. The disclosures shall be accessible at a single electronic location.

Publication of information relating to exposures to transferred credit risks.

22. For the purpose of Part Five of the CRR relating to exposures to transferred credit risks, the competent authority shall publish the information set out in Schedule IV.

Miscellaneous

Reliance on credit ratings for the purposes of assessing creditworthiness of an entity or financial instrument.

23. In encouraging certain investment firms to develop internal credit risk assessment capacity and to increase use of internal ratings based approach for calculating own funds requirements, the competent authority shall monitor, taking into account the nature, scale and complexity of the investment firms' activities, that such investment firms do not solely or mechanistically rely on external credit ratings for assessing the creditworthiness of an entity or financial instrument.

Notification to the EBA.

24. The competent authority shall inform the EBA of any authorisations it issues to the members of an investment firm's management body to hold one additional non-executive directorship in terms of Article 91 of the CRD.

Benchmarking of diversity practices by the competent authority.

25. The competent authority shall collect the information disclosed in accordance with Article 435(2)(c) of the CRR and shall use it to benchmark diversity practices. The competent authority shall provide that information to the EBA.

Data protection.

26. The competent authority, when processing personal data for the purposes of the CRD, shall do so in accordance with Directive 95/46/EC and, where relevant, with Regulation (EC) No. 45/2001.

Transitory Provisions

Applicability of regulation 6.

27. The provisions of regulation 6, shall not apply until the date on which the liquidity coverage requirement becomes applicable

in accordance with a delegated act adopted by the European Commission pursuant to Article 460 of the CRR in accordance with Article 151 of the CRD:

Provided that until the date referred to in this regulation, the provisions of regulation 6 shall be substituted with the following:

"The competent authority shall collaborate closely in order to supervise the activities of investment firms and operating, in particular through a branch, in one or more Member States other than Malta. The competent authority shall supply all information concerning the management and ownership of such investment firms to the relevant European Regulatory authorities in the Member states concerned, that is likely to facilitate their supervision and the examination of the conditions for their licensing, and all information likely to facilitate the monitoring of such investment firms, in particular with regard to liquidity, solvency, the limiting of large exposures, administrative and accounting procedures and internal control mechanisms.".

Applicability of regulation 7.

28. The provisions of regulation 7 shall not apply until the date on which the liquidity coverage requirement becomes applicable in accordance with a delegated act adopted by the European Commission pursuant to Article 460 of the CRR in accordance with Article 151 of the CRD:

Provided that until the date referred to in this regulation, the provisions of regulation 7 shall be substituted with the following:

"(1) Where a European investment firm carries out its activities through a branch in Malta, the competent authority may permit the European regulatory authority of the home Member State concerned, after it has notified the competent authority, to carry out, itself or through an intermediary, on-the-spot checks of the information referred to in regulation 6 of these regulations.

(2) The European regulatory authority of the European investment firm referred to in sub-regulation (1) may also, for the purposes of the inspection of branches have recourse to one of the other procedures set out in regulation 12 of the Supervisory Consolidation Regulations. 2013.

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(3) The provisions of sub-regulations (1) and (2) shall not affect the right of the competent authority to carry out in the discharge of its responsibilities under the CRD, on-the-spot checks of branches established in Malta.".

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Revocation

29. The Investment Services Act (Capital Adequacy) Regulations, 2008 are hereby revoked.

Revokes the Investment Services Act (Capital Adequacy Regulations) 2008. L.N. 87 of 2008.

SCHEDULE I

SUPERVISORY REVIEW AND EVALUATION

(Regulation 11)

(1) In addition to credit, market and operational risks, the review and evaluation performed by the competent authority pursuant to regulation 11 shall include at least:

(a) the results of the stress test carried out in accordance with Article 177 of the CRR by investment firms applying an internal ratings based approach to calculate their credit risk-weighted exposure;

(b) the exposure to and management of concentration risk by investment firms including their compliance with the Investment Services Rules transposing the requirements of the CRD and the requirements set out in Part Four of the CRR;

(c) the robustness, suitability and manner of application of the policies and procedures implemented by investment firms for the management of the residual risk associated with the use of recognised credit risk mitigation techniques;

(d) the extent to which the own funds held by an investment firm in respect of assets which it has securitised are adequate having regard to the economic substance of the transaction, including the degree of risk transfer achieved;

(e) the exposure to, measurement and management of liquidity risk by investment firms including the development of alternative scenario analyses, the management of risk mitigants (in particular the level, composition and quality of liquidity buffers) and effective contingency plans

(f) the impact of diversification effects and how such effects are factored into the risk measurement system;

(g) the results of stress tests carried out by investment firms using an internal model to calculate market risk own funds requirements under Part Three, Title IV, Chapter 5 of the CRR;

(h) the geographical location of investment firm’s exposures;

(i) the business model of the investment firm;

(j) the assessment of systemic risk, in accordance with the criteria set out in regulation 11.

(2) For the purposes of point (e) of paragraph 1 of this Schedule, the competent authority shall regularly carry out a comprehensive assessment of the overall liquidity risk management by investment firms and promote the development of sound internal methodologies. In its review, the competent authority shall have regard to the role played by investment firms in the financial markets. The competent authority shall also duly consider the potential impact of their decisions on the stability of the financial system in all other Member States concerned.

(3) The competent authority shall monitor whether an investment firm has provided implicit support to a securitisation. If an investment firm is found to have provided implicit support on more than one occasion the competent authority shall take appropriate measures reflective of the increased expectation that it will provide future support to its securitisation thus failing to achieve a significant transfer of risk.

(4) For the purposes of the determination to be made under regulation 11(3), the competent authority shall consider whether the valuation adjustments taken for positions or portfolios in the trading book, as set out in Article 105 of the CRR, enable the investment firm to sell or hedge out its positions within a short period without incurring material losses under normal market conditions.

(5) The review and evaluation performed by the competent authority shall include the exposure of investment firms to the interest rate risk arising from non-trading activities. Measures shall be required at least in the case of investment firms whose economic value declines by more than 20% of their own funds as a result of a sudden and unexpected change in interest rates of 200 basis points or such change as defined in the EBA guidelines.

(6) The review and evaluation performed by the competent authority shall include the exposure of investment firms to the risk of excessive leverage as reflected by indicators of excessive leverage, including the leverage ratio determined in accordance with Article 429 of the CRR. In determining the adequacy of the leverage ratio of investment firms and of the arrangements, strategies, processes and mechanisms implemented by investment firms to manage the risk of excessive leverage, the competent authority shall take into account the business model of those investment firms.

(7) The review and evaluation conducted by the competent authority shall include governance arrangements of investment firms, their corporate culture and values, and the ability of members of the management body to perform their duties. In conducting that review and evaluation, the competent authority shall, at least, have access to agendas and supporting documents for meetings of the management body and its committees, and the results of the internal or external evaluation of performance of the management body.

SCHEDULE II

SUPERVISORY EXAMINATION PROGRAMME

(Regulation 13)

(1) The annual supervisory examination programme referred to in regulation 13, shall contain the following:

(a) an indication of how the competent authority intends to carry out its tasks and allocate its resources;

(b) an identification of which investment firms are intended to be subject to enhanced supervision and the measures taken for such supervision as set out in paragraph 3;

(c) a plan for inspections at the premises used by an investment firm, including its branches and subsidiaries established in other Member States in accordance with regulation 7 of these regulations and regulations 3, 10, and 19 of the Supervisory Consolidation Regulations.

(2) Supervisory examination programmes shall include the following investment firms:

(a) investment firms for which the results of the stress tests referred to in points (a) and (g) of paragraph (1) of Schedule I and regulation 14, or the outcome of the supervisory review and evaluation process under regulation 11, indicate significant risks to their on going financial soundness or indicate breaches of the Act and any regulations and rules issued thereunder transposing the requirements of the CRD regulations and of the CRR;

(b) investment firms that pose systemic risk to the financial system;

(c) any other investment firm for which the competent authority deem it to be necessary.

(3) Where appropriate under regulation 11 the following measures shall, in particular, be taken if necessary:

(a) an increase in the number or frequency of on-site inspections of the investment firm;

(b) a permanent presence of the competent authority at the investment firm;

(c) additional or more frequent reporting by the investment firm;

(d) additional or more frequent review of the operational, strategic or business plans of the investment firm;

(e) thematic examinations monitoring specific risks that are likely to materialise.

(4) Adoption of a supervisory examination programme by a home Member State European regulatory authority with respect to a European Investment Firm which has established a branch in Malta, shall not prevent the competent authority in its capacity as the host Member State from carrying out, on a case-by-case basis, on-the-spot checks and inspections of the activities carried out by branches of investment firms in Malta in accordance with the Act and these regulations.

SCHEDULE III

SUPERVISORY POWERS

(Regulations 11, 16, 17, paragraph (4) Schedule I, and regulation 15(4))

(1) For the purposes of regulations 11, 16, 17 and paragraph (4) of Schedule I, regulation 15(4), and the application of the CRR, the competent authority shall have at least the following powers:

(a) to require investment firms to hold own funds in excess of the requirements set out in Investment Services Rules transposing the requirements of Chapter 4 of Title VII of the CRD, and in the CRR relating to elements of risks and risks not covered by Article 1 of the CRR;

(b) to require the reinforcement of the arrangements, processes, mechanisms and strategies implemented in accordance with the Investment Services Rules transposing the requirements of Articles 73 and 74 of the CRD and regulation 8 of these regulations;

(c) to require investment firms to present a plan to restore compliance with supervisory requirements pursuant to the Act, regulations or Investment Services Rules issued thereunder, and to the CRR and set a deadline for its implementation, including improvements to that plan regarding scope and deadline;

(d) to require investment firms to apply a specific provisioning policy or treatment of assets in terms of own funds requirements;

(e) to restrict or limit the business, operations or network of institutions or to request the divestment of activities that pose excessive risks to the soundness of an investment firm;

(f) to require the reduction of the risk inherent in the activities, products and systems of investment firms;

(g) to require investment firms to limit variable remuneration as a percentage of net revenues where it is inconsistent with the maintenance of a sound capital base;

(h) to require investment firms to use net profits to strengthen own funds;

(i) to restrict or prohibit distributions or interest payments by an investment firm to shareholders, members or holders of Additional Tier 1 instruments within the meaning of the CRR, where the prohibition does not constitute an event of default of the investment firm;

(j) to impose additional or more frequent reporting requirements, including reporting on capital and liquidity positions;

(k) to impose specific liquidity requirements, including restrictions on maturity mismatches between assets and liabilities;

(l) to require additional disclosures.

(2) The additional own funds requirements referred to in paragraph 1(a) of this Schedule, shall be imposed by the competent authority at least where:

(a) an investment firm does not meet the requirement set out in the Investment Services Rules transposing articles 73 and 74 of the CRD and regulation 8 of these regulations or in Article 393 of the CRR;

(b) risks or elements of risks are not covered by the own funds requirements set out in Investment Services Rules transposing the requirements of Chapter 4 of Title VII of the CRD or in the CRR;

(c) the sole application of other administrative measures is unlikely to improve the arrangements, processes, mechanisms and strategies sufficiently within an appropriate timeframe;

(d) the review referred to in paragraph (4) of Schedule I and regulation 15(4), reveals that the non-compliance with the requirements for the application of the respective approach will likely lead to inadequate own funds requirements;

(e) the risks are likely to be underestimated despite compliance with the applicable requirements of the Act, regulations or the Investment services Rules issued thereunder, and of the CRR; or

(f) an investment firm reports to the competent authority in

accordance with Article 377(5) of the CRR that the stress test results referred to in that Article materially exceed its own funds requirement for the correlation trading portfolio.

(3) For the purposes of determining the appropriate level of own funds on the basis of the review and evaluation carried out in accordance with these regulations, the competent authority shall assess whether any imposition of an additional own funds requirement in excess of the own funds requirement is necessary to capture risks to which an investment firm is or might be exposed, taking into account the following:

(a) the quantitative and qualitative aspects of an institution's assessment process referred to in the Investment services rules;

(b) an institution's arrangements, processes and mechanisms referred to in the Investment Services Rules and regulation 8 of these regulations;

(c) the outcome of the review and evaluation carried out in accordance with regulations 11 and 15 of these regulations;

(d) the assessment of systemic risk.

SCHEDULE IV

DISCLOSURE REQUIREMENTS

(Regulation 22)

(1) The competent authority shall publish the following information pursuant to regulation 22 herein:

(a) the general criteria and methodologies adopted to review compliance with Articles 405 to 409 of the CRR;

(b) without prejudice to the confidentiality provisions in the Act, a summary description of the outcome of the supervisory review and description of the measures imposed in cases of non-compliance with Articles 405 to 409 of the CRR identified on an annual basis.

(2) If the competent authority exercises the discretion laid down in Article 7(3) of the CRR it shall publish the following information:

(a) the criteria it applies to determine that there is no current or foreseen material practical or legal impediment to the prompt transfer of own

funds or repayment of liabilities;

(b) the number of parent investment firms or credit institutions which benefit from the exercise of the discretion laid down in Article 7(3) of the CRR and the number of those which incorporate subsidiaries in a third country;

(c) on an aggregate basis for Malta:

(i) the total amount of own funds on the consolidated basis of the parent investment firm or credit institution in Malta, which benefits from the exercise of the discretion laid down in Article 7(3) of the CRR, which are held in subsidiaries in a third country;

(ii) the percentage of total own funds on the consolidated basis of parent investment firms in Malta which benefit from the exercise of the discretion laid down in Article 7(3) of the CRR, represented by own funds which are held in subsidiaries in a third country;

(iii) the percentage of total own funds required under Article 92 of the CRR on the consolidated basis of parent investment firms or credit institutions in Malta, which benefit from the exercise of the discretion laid down in Article 7(3) of the CRR, represented by own funds which are held in subsidiaries in a third country.

(3) If the competent authority exercises the discretion laid down in Article 9(1) of the CRR it shall publish all the following:

(a) the criteria it applies to determine that there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities;

(b) the number of parent investment firms or credit institutions which benefit from the exercise of the discretion laid down in Article 9(1) of the CRR and the number of such parent investment firms which incorporate subsidiaries in a third country;

(c) on an aggregate basis for Malta:

(i) the total amount of own funds of parent investment firms which benefit from the exercise of the discretion laid down in Article 9(1) of the CRR which are held in subsidiaries in a third country;

(ii) the percentage of total own funds of parent investment firms or credit institutions which benefit from the exercise of the discretion laid down in Article 9(1) of the CRR represented by own funds which are held in subsidiaries in a third country;

(iii) the percentage of total own funds required under Article 92 of the CRR of parent investment firms or credit institutions which benefit from the exercise of the discretion laid down in Article 9(1) of the CRR represented by own funds which are held in subsidiaries in a third country.

SCHEDULE V

BODIES WITH WHOM THE COMPETENT AUTHORITY MAY EXCHANGE INFORMATION

(Regulation 6)

The competent authority may exchange information with:

(1) Other European regulatory authorities and may transmit information to the ESRB, EBA, or ESMA in accordance with the CRD, the CRR and with article 15 of Regulation (EU) No. 1092/2010, with Articles 31, 35 and 36 of Regulation (EU) No. 1093/2010 and with Articles 31 and 36 of Regulation (EU) No. 1095/ 2010;

(2) Authorities entrusted with the public duty of supervising other financial sector entities and the authorities responsible for the supervision of financial markets;

(3) Authorities or bodies charged with responsibility for maintaining the stability of the financial system in Member States through the use of macro prudential rules;

(4) Reorganisation bodies or authorities aiming at protecting the stability of the financial system;

(5) Contractual or institutional protection schemes as referred to in Article 113(7) of the CRR;

(6) Bodies involved in the liquidation and bankruptcy of institutions and in other similar procedures;

(7) Persons responsible for carrying out statutory audits of the accounts of institutions, insurance undertakings and financial institutions;

(8) Bodies which administer deposit-guarantee schemes and investor compensation schemes of information necessary for the exercise of their functions;

(9) Authorities responsible for overseeing:

(a) the bodies involved in the liquidation and bankruptcy of institutions and in other similar procedures;

(b) contractual or institutional protection schemes as referred to in Article 113(7) of the CRR;

(c) persons charged with carrying out statutory audits of the accounts of institutions, insurance undertakings and financial institutions;

In the cases referred to sub-paragraphs (a) to (c) above, the exchange of information shall be subject to the following conditions:

(i) that the information is exchanged for the purpose of performing the tasks referred to;

(ii) (ii) where the information originates in another Member State, that it is not disclosed without the express agreement of the authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement;

(10) (a) Authorities or bodies responsible under law for the detection and investigation of breaches of company law subject to the following conditions:

(i) that the information is exchanged for the purpose of detecting and investigating breaches of company law;

(ii) where the information originates in another Member State, that it is not disclosed without the express agreement of the authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

(b) Where the authorities or bodies referred to in paragraph (a) above perform their task of detection or investigation with the aid, in view of their specific competence, of persons appointed for that purpose and not employed in the public sector, information may be exchanged with such persons under the conditions specified in points (i) and (ii) of sub-paragraph (a) of this paragraph. The competent authority shall communicate to the EBA the names of the authorities or bodies which may receive information pursuant to this Article;

(11) ESCB central banks and other bodies with a similar function in their capacity as monetary authorities when the information is relevant for the exercise of their respective statutory tasks, including the conduct of monetary policy and related liquidity provisions, oversight of payments, clearing and settlement systems and the safeguarding of stability of the financial system;

(12) Contractual or institutional protection schemes as referred to in Article 113(7) of the CRR;

(13) Other public authorities responsible for overseeing payment systems where appropriate;

(14) The ESRB, EIOPA and ESMA, where that information is relevant for the exercise of their tasks under Regulations (EU) No 1092/2010, (EU) No 1094/ 2010 or (EU) No. 1095/2010;

(15) In an emergency situation as referred to in regulation 5 of the Supervisory Consolidation Regulations, the competent authority shall communicate, without delay, information to the ESCB central banks where that information is relevant for the exercise of their statutory tasks, including the conduct of monetary policy and related liquidity provision, the oversight of payments, clearing and settlement systems, and the safeguarding of the stability of the financial system, and to the ESRB where such information is relevant for the exercise of its statutory tasks;

(16) (1) Other departments of Member States central government administrations responsible for law on the supervision of institutions, financial institutions and insurance undertakings and to inspectors acting on behalf of those departments provided that

(a) such disclosures may be made only where necessary for reasons of prudential supervision, and prevention and resolution of failing institutions.

(b) persons having access to such information shall be subject to professional secrecy.

(2) In an emergency situation as referred to in Article 114(1) of the CRD, to disclose information which is relevant to the departments referred to in the first subparagraph of this article in all Member States concerned;

(17) (1) Parliamentary enquiry committees, courts of auditors and other entities in charge of enquiries relating to the prudential supervision of institutions in Malta, subject to the following conditions:

(a) that the entities have a precise mandate under national law to investigate or scrutinise the actions of authorities responsible for the supervision of institutions or for laws on such supervision;

(b) that the information is strictly necessary for fulfilling the mandate referred to in sub-paragraph (a);

(c) the persons with access to the information are subject to professional secrecy requirements under national law;

(d) where the information originates in another Member State that it is not disclosed without the express agreement of the authorities which have

disclosed it and, solely for the purposes for which those authorities gave their agreement.

(2) Information received pursuant to paragraphs (1) to (8) inclusive of this Schedule, and information obtained by means of an on-the-spot check or inspection referred to in regulation 7 of these regulations, shall not be disclosed to the bodies referred to in paragraphs 16 and 17(1) of this Schedule save with the express consent of the authorities which disclosed the information or of the authorities of the Member State in which such an on-the-spot check or inspection was carried out.

(18) (1) Recognised clearing houses or other similar bodies responsible for the provision of clearing or settlement services in order to ensure the proper functioning of those bodies in relation to defaults or potential defaults by market participants of the information referred to in paragraph (1) of this Schedule and articles 17(7) and 17F of the Act.

(2) The information received under paragraph (1) of this Schedule shall not be disclosed in the circumstances referred to in sub-paragraph (1) of this paragraph without the express consent of the competent authorities, which have disclosed it.

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