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L.N. 145 of 2014

BANKING ACT
(CAP. 371)

Banking Act (Access to Emissions Allowance Auction) Regulations, 2014

IN exercise of the powers conferred by article 3(2) of the Banking Act, the Minister for Finance, acting on the advice of the Malta Financial Services Authority, has made the following regulations:-

Citation and scope.

1. (1) The title of these regulations is the Banking Act (Access to Emissions Allowance Auction) Regulations, 2014.

(2) The purpose of these regulations is to implement Articles 18(1)(c), 18(3) and 59 of the Auctioning Regulation.

Interpretation.

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

"the Act" means the Banking Act; Cap. 371.

"Auctioning Regulation" means Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community, as may be amended from time to time;

"auctions" means the auctioning of emission allowances held in accordance with the Auctioning Regulation;

"credit institution" shall have the same meaning as is assigned to it under the Act and shall only include an institution which is not a holder of an Investment Services Licence issued under the Investment Services Act; Cap. 370.

"financial instruments" means the instruments listed in the Second Schedule to the Investment Services Act. Cap. 370.

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

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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 Auctioning Regulation, and any reference in these regulations to the competent authority shall be read and construed accordingly.

Applicability of the EU 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 Auctioning Regulation.

(2) Without prejudice to sub-regulation (1), the competent authority may, for the better implementation of the Auctioning Regulation, exercise any of the powers assigned to it under the Act in relation to persons engaged in bidding in emission allowance auctions.

Rules.

5. For the better carrying out of the provisions of the Auctioning Regulation and of these regulations, the competent authority may, from time to time, issue and publish Rules which shall be binding on all credit institutions which are engaged in bidding in auctions. Such rules may lay down additional requirements and conditions, and any other matters as the competent authority may consider appropriate including:

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

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

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

Admission to bid by credit institutions for products that are not financial instruments.

6. A credit institution shall be eligible to apply for admission to bid directly in emission allowance auctions on behalf of its clients when such bidding is for products that are not financial instruments, on the condition that it is authorised by the competent authority in terms of these regulations.

Application for authorization.

7. An application for authorisation in terms of regulation 6 shall be made to the competent authority in writing and shall be accompanied by such documents as the competent authority may specify.

Conditions of authorisation.

8. (1) The competent authority shall not grant

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authorisation in terms of these regulations unless the applicant:

(a) is of sufficient good repute and sufficiently experienced as to ensure proper respect of the conduct rules provided for in the Rules issued by the competent authority for this purpose;

(b) has in place the necessary processes and checks to manage conflicts of interest and serve the best interests of its clients;

(c) complies with the requirements of the Prevention of Money Laundering and Funding of Terrorism Regulations, and any regulations and guidance notes issued thereunder; and S.L. 373.01

(d) complies with any other measures deemed necessary having regard to the nature of the bidding services being offered and the level of sophistication of the clients in terms of its investor or trading profile as well as any risk-based assessment of the likelihood of money laundering, terrorist financing or criminal activity.

9. The competent authority may withdraw an authorisation granted in terms of these regulations where: Withdrawal of authorisation.

(a) the holder thereof no longer fulfils the conditions of authorisation or has contravened any of the conditions of authorisation;

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

(c) authorisation has been obtained through false statements or by other irregular means; or

(d) the holder thereof has seriously and systematically infringed any Rules issued in terms of regulation 5.

10. Where a person contravenes any of the provisions of these regulations, 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). Administrative penalties.

11. A right of appeal to the Financial Services Tribunal shall lie from a decision of the competent authority to: Appeals.

(a) reject an application for authorisation made in terms

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of these regulations;

(b) withdraw an authorisation in terms of regulation 9; or

(c) impose a penalty in terms of regulation 10.

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