VERŻJONI ELETTRONIKA

I assent.

(L.S.) **MARIE-LOUISE COLEIRO PRECA**
President

2nd December, 2016

ACT No. LIII of 2016

AN ACT to amend the Prevention of Financial Markets Abuse Act and to provide for matters ancillary or incidental thereto.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

Short title.

1. The short title of this Act is the Prevention of Financial Markets Abuse (Amendment) Act, 2016, and this Act shall be read and construed as one with the Prevention of Financial Markets Abuse Act, hereinafter referred to as "the principal Act".

Cap. 476.

Amendment of article 2 of the principal Act.

2. Article 2 of the principal Act shall be amended as follows:

(a) for the definition "accepted market practice" there shall be substituted the following:

" "accepted market practice" shall have the same meaning assigned to it in Article 3(1)(9) of the Market Abuse Regulation;";

(b) immediately after the definition "accepted market practice", as amended, there shall be added the following new definition:

" "benchmark" shall have the same meaning assigned to it in Article 3(1)(29) of the Market Abuse Regulation;";

(c) immediately after the new definition "benchmark" there shall be added the following new definition:

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" "buy-back programmes" shall have the same meaning assigned to it in Article 3(1)(17) of the Market Abuse Regulation;";

(d) for the definition "Commission Regulation (EC) No. 2273/2003" there shall be substituted the following:

" "Commission Regulation (EU) No. 1031/2010" 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;";

(e) the definition "the Community" shall be deleted;

(f) the definition "company" shall be deleted;

(g) the definition "counsel or procure" shall be deleted;

(h) the definition "credit institution" shall be deleted;

(i) immediately after the definition "EEA State" there shall be inserted the following new definition:

" "emission allowance" means those instruments specified in point (11) of Section C of Annex I of MiFID;";

(j) immediately after the definition "ESMA" there shall be added the following new definition:

" "European regulatory authority" means the single administrative authority appointed by any Member State or EEA State other than Malta, to ensure that the provisions adopted pursuant to the Market Abuse Regulation and the Market Abuse Directive are applied;";

(k) immediately after the new definition "European regulatory authority" there shall be added the following new definition:

" "European Union" or "EU" shall have the same meaning assigned to it in article 2 of the European Union Act;";

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(l) for the definition "financial instruments" there shall be substituted the following:

" "financial instruments" means those instruments specified in Section C of Annex I of MiFID;";

(m) the definition "foreign authority" shall be deleted;

(n) for the definition "implementing measures" there shall be substituted the following:

" "implementing measures" means any European Union acts, regulations or directives implementing the Market Abuse Directive and the Market Abuse Regulation, as amended from time to time, including Commission Implementing Directive (EU) 2015/2392 of 17 December 2015 on Regulation (EU) No. 596/2014 of the European Parliament and of the Council as regards reporting to competent authorities of actual or potential infringements of that Regulation;";

(o) for the definition "inside information" there shall be substituted the following:

" "inside information" shall have the same meaning assigned to it in Article 7(1) to (4) of the Market Abuse Regulation;";

(p) for the definition "investment firm" there shall be substituted the following:

" "investment firm" shall have the same meaning assigned to it in Article 3(1)(2) of the Market Abuse Regulation;";

(q) for the definition "issuer" there shall be substituted the following:

" "issuer" shall have the same meaning assigned to it in Article 3(1)(21) of the Market Abuse Regulation;";

(r) for the definition "market abuse" there shall be substituted the following:

" "market abuse" shall have the same meaning assigned to it in Article 1 of the Market Abuse Regulation;"; and

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for the words "abbuż fis-suq", wherever they appear in the Maltese text of the principal Act, there shall be substituted the words "abbuż tas-suq";

(s) for the definition "Market Abuse Directive" there shall be substituted the following:

" "Market Abuse Directive" shall refer to Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive) and includes any implementing measures issued thereafter;";

(t) immediately after the definition "Market Abuse Directive", as substituted, there shall be added the following new definition:

""Market Abuse Regulation" shall refer to Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC and includes any implementing measures issued thereafter;";

(u) in the definition "Member State", for the words "the Community", there shall be substituted the words "the European Union";

(v) immediately after the definition "Member State", as amended, there shall be added the following new definition:

" "MiFID" means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;";

(w) immediately after the definition "the Minister" there shall be added the following new definition:

" "multilateral trading facility" or "MTF" means a multilateral system, operated by an investment firm or a market operator, which brings together multiple third-

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party buying and selling interests in financial instruments - in the system and in accordance with non-discretionary rules - in a way that results in a contract in accordance with Title II of MiFID;";

(x) immediately after the new definition " "multilateral trading facility" or "MTF" " there shall be added the following new definition:

" "organised trading facility" or "OTF" means a multilateral system which is not a regulated market or an MTF and in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract in accordance with Title II of MiFID;";

(y) immediately after the new definition " "organised trading facility" or "OTF" " there shall be added the following new definition:

" "overseas regulatory authority" means any administrative authority or body in a country or territory outside Malta that is not a Member State or EEA State which exercises any regulatory or supervisory function corresponding to a function of the competent authority under this Act in the prevention of financial markets abuse and which has the responsibility to monitor the market and to detect, prevent or prosecute acts related to market abuse;";

(z) the definition "person closely associated with a person discharging managerial responsibilities with an issuer" shall be deleted;

(aa) the definition "person discharging managerial responsibilities within an issuer" shall be deleted;

(ab) the definition "person professionally arranging transactions" shall be deleted;

(ac) the definition "public employee" shall be deleted;

(ad) for the definition "regulated market" there shall be substituted the following:

" "regulated market" means:

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(a)in the case of Malta, a regulated market which has been granted authorisation in terms of the Financial Markets Act and which appears on the list of regulated markets prepared and published by the European Commission in terms of MiFID;

(b)in the case of any other Member State or EEA State, any entity which appears on the list of regulated markets prepared and published by the European Commission in terms of MiFID as defined in Article 3(1)(6) of the Market Abuse Regulation;";

(ae) immediately after the definition "regulated market", as substituted, there shall be added the following new definition:

" "Rules" means the Prevention of Financial Markets Abuse Rules issued by the competent authority under this Act or regulations made thereunder;";

(af) the definition "share" shall be deleted;

(ag) immediately after the definition "Rules", as substituted, there shall be added the following new definition:

" "spot commodity contract" shall have the same meaning assigned to it in Article 3(1)(15) of the Market Abuse Regulation;";

(ah) immediately after the new definition "spot commodity contract", there shall be added the following new definition:

" "stabilisation" shall have the same meaning assigned to it in Article 3(2)(d) of the Market Abuse Regulation;";

(ai) the definition "takeover offer for a company" shall be deleted;

(aj) immediately after the new definition "stabilisation" there shall be added the following new definition:

" "trading venue" shall have the same meaning assigned to it in Article 3(1)(24) of the Market Abuse Regulation;";

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(ak) in the definition "Tribunal" for the words "Authority Act." there shall be substituted the words "Authority Act;"; and

(al) immediately after the definition "Tribunal", as amended, there shall be added the following new definition:

" "wholesale energy product" shall have the same meaning assigned to it in Article 2(4) of the Market Abuse Regulation.".

Amendment of article 3 of the principal Act.

3. In article 3 of the principal Act, for the words "For this object, this Act transposes and implements the Market Abuse Directive and its Implementing Measures,", there shall be substituted the words "For this object, this Act also transposes and implements the Market Abuse Regulation and the Market Abuse Directive,".

Substitution of article 4 of the principal Act.

4. Article 4 of the principal Act shall be substituted by the following:

"4. (1) This Act shall apply to the following:

(a) financial instruments admitted to trading on a regulated market or for which a request for admission to trading on a regulated market has been made;

(b) financial instruments traded on a multilateral trading facility (MTF), admitted to trading on an MTF or for which a request for admission to trading on an MTF has been made;

(c) financial instruments traded on an OTF;

(d) financial instruments not covered by paragraph (a), (b) or (c), the price or value of which depends on, or has an effect on, the price or value of a financial instrument referred to in those paragraphs, including, but not limited to, credit default swaps and contracts for difference.

(2) This Act shall also apply to behaviour or transactions, including bids, relating to the auctioning on an auction platform authorised as a regulated market of emission allowances or other auctioned products based thereon, including when auctioned products are not financial instruments, pursuant to Commission Regulation (EU) No. 1031/2010. Without prejudice to any specific provisions referring to bids submitted in the context of an auction, any provisions in this Act referring to orders to trade shall apply to such bids.

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(3) This Act shall not apply to:

(a) trading in own shares in buy-back programmes, where such trading is carried out in accordance with Article 5(1), (2) and (3) of the Market Abuse Regulation;

(b) trading in securities or associated instruments as referred to in paragraphs (a) and (b) of Article 3(2) of the Market Abuse Regulation for the stabilisation of securities, where such trading is carried out in accordance with Article 5(4) and (5) of the Market Abuse Regulation;

(c) transactions, orders or behaviours carried out in pursuit of monetary, exchange rate or public debt management policy in accordance with Article 6(1) of the Market Abuse Regulation, transactions order or behaviours carried out in accordance with Article 6(2) thereof, activities in pursuit of the Union's climate policy in accordance with Article 6(3) thereof, or activities in pursuit of the European Union's Common Agricultural Policy or of the European Union's Common Fisheries Policy in accordance with Article 6(4) thereof.

(4) Article 8 shall also apply to:

(a) spot commodity contracts that are not wholesale energy products, where the transaction, order or behaviour has an effect on the price or value of a financial instrument referred to in sub-article (2);

(b) types of financial instruments, including derivative contracts or derivative instruments for the transfer of credit risk, where the transaction, order, bid or behaviour has an effect on the price or value of a spot commodity contract where the price or value depends on the price or value of those financial instruments;

(c) behaviour in relation to benchmarks.

(5) This Act applies to any transaction, order or behaviour concerning any financial instrument as referred to in sub-articles (1) and (4), irrespective of whether or not such transaction, order or behaviour takes place on a trading venue.".

Amendment of article 5 of the principal Act.

5. Article 5 of the principal Act shall be amended as follows:

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(a) in paragraph (a) thereof:

(i) for the words "on a regulated market in Malta,", there shall be substituted the words "on a trading venue in Malta,"; and

(ii) for the words "on such market in Malta", there shall be substituted the words "on such trading venue in Malta"; and

(b) in paragraph (b) thereof:

(i) for the words "on a regulated market in any other Member State", there shall be substituted the words "on a trading venue in any other Member State"; and

(ii) for the words "on such market has been made.", there shall be substituted the words "on such trading venue has been made.".

Substitution of article 6 of the principal Act.

6. Article 6 of the principal Act shall be substituted by the following:

"6. (1) Insider dealing, recommending or inducing another person to engage in insider dealing, as referred to in this article, shall constitute a criminal offence when committed intentionally.

(2) It shall also be a criminal offence to attempt to commit any of the offences referred to in sub-article (1).

(3) Inciting, aiding or abetting any of the offences referred to in sub-article (1) shall also amount to a criminal offence.

(4) For the purposes of sub-article (1), insider dealing arises where a person possesses inside information and uses that information by acquiring or disposing of, for its own account or for the account of a third party, directly or indirectly, financial instruments to which that information relates.

(5) The use of inside information by cancelling or amending an order concerning a financial instrument to which the information relates where the order was placed before the person concerned possessed the inside information shall also be considered to be insider dealing.

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(6) For the purposes of sub-article (1), recommending that another person engage in insider dealing, or inducing another person to engage in insider dealing, arises where the person possesses inside information and:

(a) recommends, on the basis of that information, that another person acquire or dispose of financial instruments to which that information relates, or induces that person to make such an acquisition or disposal; or

(b) recommends, on the basis of that information, that another person cancel or amend an order concerning a financial instrument to which that information relates, or induces that person to make such a cancellation or amendment:

Provided that the use of the recommendations or inducements amounts to insider dealing where the person using the recommendation or inducement knows that it is based upon inside information.

(7) This article applies to any person who possesses inside information as a result of:

(a) being a member of the administrative, management or supervisory bodies of the issuer or emission allowance market participant;

(b) having a holding in the capital of the issuer or emission allowance market participant;

(c) having access to the information through the exercise of an employment, profession or duties; or

(d) being involved in criminal activities.

(8) This article also applies to any person who has obtained inside information under circumstances other than those referred to in sub-article (5) where that person knows that it is inside information.

(9) In relation to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (EU) No. 1031/2010, the use of inside information referred to in sub-article (5) shall also comprise submitting, modifying or withdrawing a bid by a person for its own account or for the account of a third party.

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(10) For the purposes of this article, it shall not be deemed from the mere fact that a person is or has been in possession of inside information that that person has used that information and has thus engaged in insider dealing on the basis of an acquisition or disposal, where its behaviour qualifies as legitimate behaviour under Article 9 of the Market Abuse Regulation.

(11) The provisions of this article shall be without prejudice to any of the provisions of the Market Abuse Regulation.".

Addition of new article to the principal Act.

7. Immediately after article 6 of the principal Act, as substituted, there shall be added the following new article:

"Unlawful disclosure of inside information.

6A. (1)Unlawful disclosure of inside information shall also constitute a criminal offence when committed intentionally.

(2) Inciting, aiding or abetting the offence referred to in sub-article (1) shall also amount to a criminal offence.

(3) For the purposes of this article, unlawful disclosure of inside information arises where a person possesses inside information and discloses that information to any other person, except where the disclosure is made in the normal exercise of an employment, a profession or duties as defined under sub-article (5), including where the disclosure qualifies as a market sounding made in compliance with Article 11(1) to (8) of the Market Abuse Regulation.

(4) This article applies to any person in the situations or circumstances referred to in article 6(7).

(5) For the purposes of this Act, the onward disclosure of recommendations or inducements referred to in article 6(6) amounts to unlawful disclosure of inside information where the person disclosing the recommendation or inducement knows that it was based on inside information.

(6) This article shall be applied in accordance with the laws of the freedom of the press and the freedom of expression.".

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Substitution of article 7 of the principal Act.

8. Article 7 of the principal Act shall be substituted by the following:

"7. Without prejudice to any of the provisions of the Market Abuse Regulation where an issuer or emission allowance market participant has delayed disclosure of inside information under Article 17(4) of the Market Abuse Regulation, it shall inform the competent authority that disclosure of the information was delayed and shall provide a written explanation of how the conditions set out in Article 17(4) were met, immediately after the information is disclosed to the public.".

Substitution of article 8 of the principal Act.

9. Article 8 of the principal Act shall be substituted by the following:

"8. (1) Market manipulation, as referred to in this article, shall constitute a criminal offence when committed intentionally.

(2) It shall also be a criminal offence to attempt to commit any of the offences referred to in sub-article (1).

(3) Inciting, aiding or abetting the offence referred to in sub-article (1) shall also amount to a criminal offence.

(4) For the purposes of this article, market manipulation shall comprise the following activities:

(a) entering into a transaction, placing an order to trade or any other behaviour which:

(i) gives false or misleading signals as to the supply of, demand for, or price of, a financial instrument or a related spot commodity contract; or

(ii) secures the price of one or several financial instruments or a related spot commodity contract at an abnormal or artificial level:

Provided that the reasons for so doing of the person who entered into the transactions or issued the orders to trade are legitimate, and those transactions or orders to trade are in conformity with accepted market practices on the trading venue concerned;

(b) entering into a transaction, placing an order to trade or any other activity or behaviour which affects the

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price of one or several financial instruments or a related spot commodity contract, which employs a fictitious device or any other form of deception or contrivance;

(c) disseminating information through the media, including the internet, or by any other means, which gives false or misleading signals as to the supply of, demand for, or price of a financial instrument, or a related spot commodity contract, or secures the price of one or several financial instruments or a related spot commodity contract at an abnormal or artificial level, where the persons who made the dissemination derive for themselves or for another person an advantage or profit from the dissemination of the information in question; or

(d) transmitting false or misleading information or providing false or misleading inputs or any other behaviour which manipulates the calculation of a benchmark.

(5) The provisions of this article shall be without prejudice to any of the provisions of the Market Abuse Regulation,".

Substitution of article 9 of the principal Act.

10. Article 9 of the principal Act shall be substituted by the following:

"9. Without prejudice to any provisions of the Market Abuse Regulation, the issuer or emission allowance market participant shall ensure that the information that is notified in accordance with Article 19(1) of the Market Abuse Regulation is made public promptly and no later than three working days after the transaction in a manner which enables fast access to this information on a non-discriminatory basis. The issuer or emission allowance market participant shall use such media as may reasonably be relied upon for the effective dissemination of information to the public.".

Deletion of article 10 of the principal Act.

11. Article 10 of the principal Act shall be deleted.

Deletion of article 11 of the principal Act.

12. Article 11 of the principal Act shall be deleted.

Deletion of article 12 of the principal Act.

13. Article 12 of the principal Act shall be deleted.

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Amendment of article 13 of the principal Act.

14. Article 13 of the principal Act shall be amended as follows:

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

(i) for the words "under this Act or any other law,", there shall be substituted the words "under this Act, the Market Abuse Regulation or any other law,"; and

(ii) for the words "monitoring any regulated market in Malta", there shall be substituted the words "monitoring any trading venue in Malta";

(b) sub-article (3) thereof shall be amended as follows:

(i) for the words "foreign authority", there shall be substituted the words "European regulatory authority and an overseas regulatory authority"; and

(ii) for the words "that its officials", there shall be substituted the words "that their officials";

(c) in sub-article (4) thereof:

(i) for the words "only where", there shall be substituted the words "namely where"; and

(ii) for paragraph (a) thereof there shall be substituted the following:

"(a) such an investigation might adversely affect the sovereignty, security or public policy of Malta, in particular the fight against terrorism and other serious crimes or complying with the request is likely to affect its own investigation, enforcement activities or, where applicable, a criminal investigation;"; and

(d) in the paragraph immediately following paragraph (c) thereof, for the words "foreign authority" there shall be substituted the words "European regulatory authority or the overseas regulatory authority".

Amendment of article 14 of the principal Act.

15. Sub-article (1) of article 14 of the principal Act shall be amended as follows:

(a) for the words "in the exercise of its functions under this Act the competent authority shall", there shall be

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substituted the words "in the exercise of its functions under this Act and, or under the Market Abuse Regulation, the competent authority shall"; and

(b) in paragraph (a) thereof, for the words "prohibited by any of the provisions of this Act;", there shall be substituted the words "prohibited by any of the provisions of this Act or the Market Abuse Regulation;".

Amendment of article 15 of the principal Act.

16. In article 15 of the principal Act, for the words "in the exercise of its functions and powers under this Act the competent authority shall", there shall be substituted the words "in the exercise of its functions under this Act and, or under the Market Abuse Regulation, the competent authority shall".

Amendment of article 16 of the principal Act.

17. Article 16 of the principal Act shall be amended as follows:

(a) in paragraph (a) of sub-article (1) thereof, for the words "in the exercise of its powers under this Act, the competent authority may", there shall be substituted the words "in the exercise of its powers under this Act and, or under the Market Abuse Regulation, the competent authority may"; and

(b) in sub-article (6) thereof, for the words "may have been in breach of this Act," there shall be substituted the words "may have been in breach of this Act and, or the Market Abuse Regulation,".

Addition of article to the principal Act.

18. Immediately after article 16 of the principal Act, there shall be added the following new article:

"Assistance for on-site inspections.

16A. Without prejudice to any other function of the competent authority under this Act, under the Market Abuse Regulation or any other law, the competent authority in Malta may request assistance from a European regulatory authority or an overseas regulatory authority with regard to on-site inspection.".

Amendment of article 17 of the principal Act.

19. Article 17 of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof, for the words "in the exercise and for the purposes of its functions under this Act and for the better implementation thereof,", there shall be substituted the words "in the exercise and for the purposes of its functions under this Act and, or under the Market Abuse

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Regulation and for the better implementation thereof,"; and

(b) in sub-article (2) thereof:

(i) in paragraph (a) thereof, for the words "provisions of this Act, or of any rules or regulations issued thereunder", there shall be substituted the words "provisions of this Act, the Market Abuse Regulation, any rules and, or regulations issued thereunder";

(ii) in paragraph (b) thereof, for the words "Financial Markets Act; and", there shall be substituted the words "Financial Markets Act;";

(iii) in paragraph (c) thereof, for the words "as applicable.", there shall be substituted the words "as applicable;"; and

(iv) immediately after paragraph (c) thereof, there shall be added the following new paragraphs:

"(d) require the person responsible for the infringement to desist from a repetition of that conduct;

(e) request for the disgorgement of the profits gained or losses avoided due to the infringement insofar as they can be determined;

(f) contain a public warning which indicates the person responsible for the infringement and the nature of the infringement;

(g) require the withdrawal of the authorisation of an investment firm;

(h) place a temporary ban on the person discharging managerial responsibilities within an investment firm or on any other natural person, who is held responsible for the infringement, from exercising management functions in investment firms;

(i) place a permanent ban on the person discharging managerial responsibilities within an investment firm or on any other natural person, who is held responsible for the infringement, from exercising management functions in investment

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firms only in the event of repeated infringements of Article 14 or 15 of the Market Abuse Regulation;

(j) place a temporary ban on the person discharging managerial responsibilities within an investment firm or on any other natural person, who is held responsible for the infringement, from exercising management functions in investment firms;

(k) impose a temporary prohibition on the exercise of professional activity.".

Addition of new articles to the principal Act.

20. Immediately after article 17 of the principal Act, there shall be added the following new articles:

"Information from market participants.

17A. In the exercise of its powers under this Act and, or the Market Abuse Regulation, the competent authority may request information from market participants in relation to commodity derivatives on related spot markets according to standardised formats, obtain reports on transactions, and have direct access to traders' system.

Correct information.

17B. In the exercise of its powers under this Act and, or the Market Abuse Regulation, the competent authority must take all necessary measures to ensure that the public is correctly informed, *inter alia*, by correcting false or misleading disclosed information, including by requiring an issuer or other person who has published or disseminated false or misleading information to publish a corrective statement.

Criminal investigation.

17C. In the exercise of its powers under this Act and, or the Market Abuse Regulation, the competent authority may refer matters for criminal investigation.".

Amendment of article 18 of the principal Act.

21. Sub-article (1) of article 18 of the principal Act shall be amended as follows:

(a) for the words "conducted pursuant to this Act,", there shall be substituted the words "conducted pursuant to this Act, and, or the Market Abuse Regulation,"; and

(b) for the words "a breach of this Act,", there shall be substituted the words "a breach of this Act, and, or the Market Abuse Regulation,".

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Amendment of article 19 of the principal Act.

22. In paragraph (a) of sub-article (1) of article 19 of the principal Act, for the words "in default of any provision of this Act and upon receiving", there shall be substituted the words "in default of any provisions of this Act and, or of the Market Abuse Regulation and upon receiving".

Addition of new article to the principal Act.

23. Immediately after article 19 of the principal Act, there shall be added the following new article:

"Corrective statement.

19A. The competent authority shall ensure that the public is correctly informed by correcting false or misleading disclosed information, including by requiring an issuer or other person who has published or disseminated false or misleading information to publish a corrective statement.".

Amendment of article 20 of the principal Act.

24. Article 20 of the principal Act shall be amended as follows:

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

(i) for the words "with this Act, the competent authority", there shall be substituted the words "with this Act and the Market Abuse Regulation, the competent authority";

(ii) in paragraph (b) thereof, for the words "foreign authority", there shall be substituted the words "European regulatory authority, overseas regulatory authority";

(b) for paragraph (b) of sub-article (2) thereof, there shall be substituted the following:

"(b) where the assistance is required by a European regulatory authority for the purposes of the exercise of one or more of its regulatory functions under the Market Abuse Directive, and, or the Market Abuse Regulation;";

(c) sub-article (3) thereof shall be substituted by the following:

"(3) Upon receipt from a European regulatory authority for the purpose of carrying out its duties in the investigation and detection in terms of the Market Abuse Directive, and, or the Market Abuse Regulation, including a request by the European regulatory authority

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for them to accompany officers, employees or other agents of the competent authority during the course of an investigation, the competent authority shall immediately take the necessary measures in order to gather the information required by the European regulatory authority. If the competent authority is not able to supply the required information immediately, it shall notify the requesting European regulatory authority of the reasons.";

(d) in sub-article (4) thereof:

(i) for the words "where:", there shall be substituted the words "namely where:";

(ii) for paragraph (a) thereof, there shall be substituted the following:

"(a) communication might adversely affect the sovereignty, security or public policy of Malta, in particular the fight against terrorism and other serious crimes or complying with the request is likely to affect its own investigation, enforcement activities or, where applicable, a criminal investigation;";

(iii) in the paragraph immediately following paragraph (c) thereof, for the words "foreign authority", there shall be substituted the words "European regulatory authority";

(e) sub-article (5) thereof shall be substituted by the following:

"(5) Where the competent authority is convinced that acts contrary to the provisions of the Market Abuse Directive and the Market Abuse Regulation are being, or have been, carried out on the territory of another Member State or EEA State, it shall give notice of that fact to the relevant European regulatory authority in as specific a manner as possible.";

(f) in the proviso to sub-article (6) thereof, for the words "foreign authority" there shall be substituted the words "European regulatory authority";

(g) sub-article (7) thereof shall be substituted by the

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following:

"(7) Without prejudice to Article 258 of the Treaty on the Functioning of the European Union, where a request for information, co-ordination of efforts or other form of collaboration, including a request to accompany officials of the European regulatory authority during the course of an investigation in terms of the Market Abuse Directive, and, or the Market Abuse Regulation, made by the competent authority to a European regulatory authority in terms of this article is not acted upon within a reasonable time or is rejected, the competent authority may refer such rejection or absence of action to ESMA within a reasonable timeframe."; and

(h) in paragraph (a) of sub-article (8) thereof, for the words "any authority, body or", there shall be substituted the words "any overseas regulatory authority, authority, body or".

Deletion of article 20A of the principal Act.

25. Article 20A of the principal Act shall be deleted.

Amendment of article 21 of the principal Act.

26. Article 21 of the principal Act shall be amended as follows:

(a) sub-article (1) thereof shall be renumbered as article 21;

(b) in article 21 thereof, as renumbered, for the words "Market Abuse Directive", there shall be substituted the words "Market Abuse Regulation and Market Abuse Directive";

(c) in article 21 thereof, as renumbered, the words "and such rules shall be published in the Gazette" shall be deleted; and

(d) sub-article (2) thereof shall be deleted.

Amendment of article 22 of the principal Act.

27. Article 22 of the principal Act shall be amended as follows:

(a) sub-article (1) thereof shall be substituted by the following:

"(1) Where the competent authority is satisfied that a person's conduct amounts to a breach of any of Articles 14, 15, 16, 17, 18, 19 and 20 of the Market Abuse Regulation, the competent authority may by notice in

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writing and without recourse to a court hearing impose an administrative penalty in respect of a natural person, consisting of a fine which may not exceed:

(a) five million euro (€5,000,000) for infringements of Article 14 or 15 of the Market Abuse Regulation;

(b) one million euro (€1,000,000) for infringements of Articles 16 and 17 of the Market Abuse Regulation;

(c) five hundred thousand euro (€500,000) for infringements of Article 18, 19 or 20 of the Market Abuse Regulation,

whereas in respect of legal persons, the penalty consists of a fine which may not exceed:

(a) fifteen million euro (€15,000,000) or 15% of the total annual turnover of the legal person according to the last available accounts approved by the management body for infringements of Articles 14 and 15 of the Market Abuse Regulation;

(b) two million five hundred thousand euro (€2,500,000) or 2% of its total annual turnover according to the last available accounts approved by the management body for infringements of Article 16 or 17 of the Market Abuse Regulation;

(c) one million euro (€1,000,000) for infringements of Article 18, 19 or 20 of the Market Abuse Regulation.";

(b) immediately after sub-article (1) thereof, there shall be added the following new sub-article:

"(1A) Where the competent authority is satisfied that a person's conduct amounts to a breach of any of the provisions of this Act, regulations or rules issued thereunder other than any of the provisions thereof which are also regulated by the Market Abuse Regulation, or to a breach of any of the other provisions of the Market Abuse Regulation not referred to in sub-article (1), the competent authority may by notice in

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writing and without recourse to a court hearing impose on any such natural or legal person an administrative penalty, consisting of a fine which may not exceed one hundred and fifty thousand euro (€150,000) for each infringement or failure to comply, as the case may be.";

(c) in sub-article (2) thereof, for the words "upon whom a notice is served may apply", there shall be substituted the words "upon whom a notice is served in terms of sub-articles (1) and (1A) may apply"; and

(d) in sub-article (4) thereof, for the words "in subarticle (1)", there shall be substituted the words "in sub-articles (1) and (1A)".

Amendment of article 24 of the principal Act.

28. Article 24 of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof, for the words "comply with any of the provisions of article 6, 8, 14, 15, 16, 18 or 19", there shall be substituted the words "comply with any of the provisions of article 6, 6A, 8, 14, 15, 16, 17A, 18 or 19";

(b) sub-article (5) thereof shall be substituted by the following:

"(5) (a) A natural person found guilty of an infringement of sub-articles (2) to (4) or under the provisions of articles 6, 6A, 8, 14, 15, 16 or 17A shall be liable on conviction to a fine (*multa*) of not less than five thousand euro (€5,000) and not exceeding five million euro (€5,000,000) or up to three times the profit made or the loss avoided by virtue of the offence, whichever is the greater, or to imprisonment for a term not exceeding six years or to both such fine and imprisonment;

(b) a legal person found guilty of an infringement of sub-articles (2) to (4) or under the provisions of article 6, 6A, 8, 14, 15, 16 or 17A shall be liable on conviction to a fine (*multa*) of not less than five thousand euro (€5,000) and not exceeding fifteen million euro (€15,000,000) or up to three times the profit made or the loss avoided by virtue of the offence, whichever is the greater, or to:

(i) exclusion from entitlement to public benefits or aid;

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(ii) temporary or permanent disqualification from the practice of commercial activities;

(iii) placing under judicial supervision;

(iv) judicial winding-up;

(v) temporary or permanent closure of establishments which have been used for committing the offence,

or to both such fine and any or all of the measures mentioned in sub-paragraphs (i) to (v);

(c) legal persons can be held liable for infringements of any of the provisions of the Act referred to in paragraph (b) committed for their benefit by any person, acting either individually or as part of an organ of the legal person, and having a leading position within the legal person based on:

(i) a power of representation of the legal person;

(ii) an authority to take decisions on behalf of the legal person; or

(iii) an authority to exercise control within the legal person;

(d) legal persons shall also be held liable where the lack of supervision or control, by a person referred to in paragraph (c), has made possible the commission of an offence referred to in articles 6, 6A and 8 for the benefit of the legal person by a person under its authority;

(e) the liability of legal persons under this sub-article shall not exclude criminal proceedings against natural persons who are involved as perpetrators, inciters or accessories in the offences referred to in articles 6, 6A and 8.".

29. Immediately after article 24 of the principal Act, there

Addition of new articles to the principal Act.

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shall be added the following new articles:

"Applicability. 24A. (1)The provisions of this Act shall apply to the offences which have been committed:

(a) in whole or in part within the Maltese territory, or

(b) by one of its nationals, or

(c) by the offender who is a habitual resident in the Maltese territory, or

(d) for the benefit of a legal person established in the Maltese territory.

Reporting of infringements. 24B. Reporting of infringements in terms of Article 32 of the Market Abuse Regulation shall be carried out in accordance with the Reporting of Infringements Regulations, 2016.".

Substitution of article 25 of the principal Act. **30.** Article 25 of the principal Act shall be substituted by the following:

"25. (1) The Minister may, acting on the advice of the competent authority, make regulations to better implement the provisions of this Act, and to better transpose the Market Abuse Directive and to better implement the provisions of the Market Abuse Regulation. Regulations made under this article, and strictly related to transposition or implementation as aforesaid, may provide that any provision of this Act or of any other law shall not apply to matters falling under the regulations, and that in so far as any of the provisions of the regulations are inconsistent with the provisions of this Act or of any other law, such provisions in any such regulations shall prevail.

(2) Regulations made under this article, may be made subject to such exemptions or conditions as may be specified therein, may make different provision for different cases, circumstances or purposes and may give to the competent authority such powers of adaptation and revocation of the regulations as may also be so specified.

(3) Where regulations have been made in terms of this article, the competent authority may issue Rules within the meaning of article 21 for the better carrying out and to better implement the provisions of the regulations.

(4) Regulations made under this article may impose:

(a) administrative penalties which may not exceed

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one hundred and fifty thousand euro (€150,000) for each infringement or failure to comply, as the case may be;

(b) criminal punishments in respect of any offence which shall not exceed a fine (*multa*) of one hundred and fifty thousand euro (€150,000) or imprisonment for a term not exceeding one year, or both such fine and imprisonment; and

(c) administrative penalties and fines higher than one hundred and fifty thousand euro (€150,000), in respect of any contravention of or failure to comply with any regulations made under this Act where necessary for the purpose of transposing or giving effect to any of the provisions of the Market Abuse Directive or the Market Abuse Regulation.

(5) Regulations made under this article may also provide for the assignment of power and authority to the competent authority in order to enable it to ensure that the provisions of the regulations are properly implemented.".

Addition of new article to the principal Act.

31. Immediately after article 28 of the principal Act there shall be added the following new article:

"Provision of appropriate training.

29. Without prejudice to the independence of the judiciary, the Minister may, where he considers it appropriate, request any organisation responsible for the training of judges, prosecutors, the police and the staff of the competent authority that may be in any way involved in criminal proceedings and investigations, on any matter provided for in this Act, to provide appropriate training with respect to the objectives of this Act and of the Market Abuse Regulation.".

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Passed by the House of Representatives at Sitting No. 455 of the 28th November, 2016.

ĊENSU GALEA
Deputy Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

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