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L.N. 78 of 2017

MALTA FINANCIAL SERVICES AUTHORITY ACT (CAP. 330)

Malta Financial Services Authority Act (Transparency of securities financing transactions and of reuse) Regulations, 2017

IN exercise of the powers conferred by article 20A 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 scope.

1. (1) The title of these regulations is the Malta Financial Services Authority Act (Transparency of securities financing transactions and of reuse) Regulations, 2017.

(2) The purpose of these regulations is to lay down rules on the transparency of securities financing transactions and of reuse, and to implement the relevant provisions of the SFTR as herein defined, and they shall be interpreted and applied accordingly.

Interpretation.

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

"the Act" means the Malta Financial Services Authority Act; Cap. 330.

"branch" means a place of business other than the head office which is part of a counterparty and which has no legal personality;

"buy-sell back transaction" or "sell-buy back transaction" means a transaction by which a counterparty buys or sells securities, commodities, or guaranteed rights relating to title to securities or commodities, agreeing, respectively, to sell or to buy back securities, commodities or such guaranteed rights of the same description at a specified price on a future date, that transaction being a buy-sell back transaction for the counterparty buying the securities, commodities or guaranteed rights, and a sell-buy back transaction for the counterparty selling them, such buy-sell back transaction or sell-buy back transaction not being governed by a repurchase agreement or by a reverse-repurchase agreement within the meaning of a repurchase transaction;

"counterparties" means financial counterparties and non-financial counterparties;

"established" means:

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(a) if the counterparty is a natural person, where it has its head office;

(b) if the counterparty is a legal person, where it has its registered office;

(c) if the counterparty has, under its national law, no registered office, where it has its head office;

"financial counterparty" means:

(a) an investment firm authorised in accordance with Directive 2014/65/EU of the European Parliament and of the Council;

(b) a credit institution authorised in accordance with Directive 2013/36/EU of the European Parliament and of the Council or with Regulation (EU) No 1024/2013;

(c) an insurance undertaking or a reinsurance undertaking authorised in accordance with Directive 2009/138/EC of the European Parliament and of the Council;

(d) a UCITS and, where relevant, its management company, authorised in accordance with Directive 2009/65/EC;

(e) an AIF managed by AIFMs authorised or registered in accordance with Directive 2011/61/EU;

(f) an institution for occupational retirement provision authorised or registered in accordance with Directive 2003/41/EC of the European Parliament and of the Council;

(g) a central counterparty authorised in accordance with Regulation (EU) No 648/2012;

(h) a central securities depository authorised in accordance with Regulation (EU) No 909/2014;

(i) a third-country entity which would require authorisation or registration in accordance with the legislative acts referred to in points (a) to (h) if it were established in the Union;

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

"margin lending transaction" means a transaction in which a

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counterparty extends credit in connection with the purchase, sale, carrying or trading of securities, but not including other loans that are secured by collateral in the form of securities;

"non-financial counterparty" means an undertaking established in the Union or in a third country other than entities falling under the definition of a financial counterparty ;

"repurchase transaction" means a transaction governed by an agreement by which a counterparty transfers securities, commodities, or guaranteed rights relating to title to securities or commodities where that guarantee is issued by a recognised exchange which holds the rights to the securities or commodities and the agreement does not allow a counterparty to transfer or pledge a particular security or commodity to more than one counterparty at a time, subject to a commitment to repurchase them, or substituted securities or commodities of the same description at a specified price on a future date specified, or to be specified, by the transferor, being a repurchase agreement for the counterparty selling the securities or commodities and a reverse repurchase agreement for the counterparty buying them;

"reuse" means the use by a receiving counterparty, in its own name and on its own account or on the account of another counterparty, including any natural person, of financial instruments received under a collateral arrangement, such use comprising transfer of title or exercise of a right of use in accordance with Article 5 of Directive 2002/47/EC but not including the liquidation of a financial instrument in the event of default of the providing counterparty;

"securities or commodities lending" or "securities or commodities borrowing" means a transaction by which a counterparty transfers securities or commodities subject to a commitment that the borrower will return equivalent securities or commodities on a future date or when requested to do so by the transferor, that transaction being considered as securities or commodities lending for the counterparty transferring the securities or commodities and being considered as securities or commodities borrowing for the counterparty to which they are transferred;

"securities financing transaction" or "SFT" means:

(a) a repurchase transaction;

(b) securities or commodities lending and securities or commodities borrowing;

(c) a buy-sell back transaction or sell-buy back

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transaction;

(d) a margin lending transaction;

"SFTR" means Regulation (EU) 2015/2365 of the European Parliament and of the Council of the 25 November, 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012, as may be amended from time to time.

(2) Words and expressions used in these regulations shall have the same meaning as is assigned to them in the Act unless otherwise defined herein.

(3) In the event that any of these regulations conflict with the provisions of the SFTR, the latter shall prevail.

Competent authority. Cap. 330.

3. The Malta Financial Services Authority established by the Act shall be the designated competent authority in Malta for the purposes of implementing the relevant provisions of the SFTR, 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 SFTR.

(2) Without prejudice to the provisions of sub-regulation (1), the competent authority may, for the better implementation of the SFTR, exercise any of the powers assigned to it under the Act in relation to:

(a) a counterparty to an SFT that is established:

(i) in Malta, including all its branches irrespective of where they are located;

(ii) in a third country, if the SFT is concluded in the course of the operations of a branch in Malta of that counterparty;

(b) management companies of undertakings for UCITS and UCITS investment companies in accordance with Directive 2009/65/EC;

(c) AIFMs authorized in accordance with Directive 2011/61/EU;

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(d) a counterparty engaged in reuse that is established:

(i) in Malta, including all its branches irrespective of where they are located;

(ii) in a third country, where either, the reuse is effected in the course of operations of a branch in Malta of that counterparty, or the reuse concerns financial instruments provided under a collateral arrangement by a counterparty established in Malta or a branch in Malta of a counterparty established in a third country.

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