

Suppliment tal-Gazzetta tal-Gvern ta' Malta Nru. 19,925, 22 ta' Diċembru, 2017

Taqsimha B

L.N. 387 of 2017

**FINANCIAL MARKETS ACT
(CAP. 345)**

**INVESTMENT SERVICES ACT
(CAP. 370)**

Central Counterparties Access Regulations, 2017

IN EXERCISE of the powers conferred by article 49 of the Financial Markets Act and article 12 of the Investment Services Act, the Minister responsible for the regulation of financial services, acting on the advice of the Malta Financial Services Authority, has made the following regulations:

1. (1) The title of these regulations is the Central Counterparties Access Regulations, 2017. Title, scope and commencement.

(2) The purpose of these regulations is to transpose and implement Article 4(1)(51), and Articles 37 and 38 of MIFID as herein defined, and they shall be interpreted and applied accordingly.

(3) These regulations shall come into force on the 3rd January 2018.

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

"the Acts" means the Financial Markets Act and the Investment Services Act; Cap. 345.
Cap. 370.

"Central Bank of Malta" means the bank established by article 3 of the Central Bank of Malta Act; Cap. 204.

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

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

"investment firm" means any person, other than persons to whom MiFID does not apply in terms of Article 2 of the said

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directive, whose regular occupation or business is the provision of any one or more core investment services to third parties on a professional basis;

"Maltese investment firm" means a person licensed in terms of the Act, whose head office is in Malta and who is entitled to carry on an activity in a Member State or EEA State other than Malta in exercise of a European right;

"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.

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

Access to
Maltese CCP,
clearing and
settlement
facilities and
right to
designate
settlement
system.

3. (1) Without prejudice to Titles III, IV or V of the EMIR Regulation, investment firms, market operators operating an MTF and regulated markets from Member States or EEA States other than Malta shall have the right of direct and indirect access to CCP, clearing and settlement systems in Malta for the purposes of finalising or arranging the finalisation of transactions in financial instruments.

(2) The direct and indirect access of the investment firms, market operators operating an MTF and regulated markets referred to in sub-regulation (1) to such facilities shall be subject to the same non-discriminatory, transparent and objective criteria which apply to local members or participants.

(3) The use of the facilities referred to in sub-regulation (1) to the clearing and settlement of transactions in financial instruments undertaken on a trading venue in Malta shall not be restricted.

(4) Regulated markets shall offer, in Malta, the right to designate the system for the settlement of transactions in financial instruments undertaken on that regulated market to all their members or participants, subject to the following conditions:

(a) such links and arrangements between the designated settlement system and any other system or facility as are necessary to ensure the efficient and economic settlement of the transaction in question;

(b) agreement by the competent authority that

technical conditions for settlement of transactions concluded on the regulated market through a settlement system other than that designated by the regulated market are such as to allow the smooth and orderly functioning of financial markets.

(5) Any assessment by the competent authority shall be without prejudice to the competences of the Central Bank of Malta as overseer of settlement systems. The competent authority shall take into account the oversight and, or supervision of the clearing and settlement system already exercised by the Central Bank of Malta as overseer of clearing and settlement systems in order to avoid undue duplication of control.

4. (1) The competent authority shall not prevent investment firms, market operators operating an MTF and regulated markets from Member States or EEA States other than Malta from entering into appropriate arrangements with a CCP or clearing house and a settlement system in Malta with a view to providing for the clearing and, or settlement of some or all trades concluded by the members or participants under their systems.

Provisions regarding CCPs, clearing and settlement arrangements in respect of EU or EEA investment firms, market operators operating an MTF, and regulated markets.

(2) The European regulatory authority shall take into account the oversight and, or supervision of the clearing and settlement system already exercised by the Central Bank of Malta and other central banks as overseers of clearing and settlement systems in order to avoid undue duplication of control.

5. (1) Maltese investment firms, market operators operating an MTF and regulated markets shall not be prevented from entering into appropriate arrangements with a CCP or clearing house and a settlement system of another Member State or an EEA State with a view to providing for the clearing and, or settlement of some or all trades concluded by the members or participants under their systems.

Access to European CCP, clearing and settlement facilities.

(2) The competent authority may not oppose the use of CCP, clearing houses and, or settlement systems in another Member State or EEA State except where demonstrably necessary in order to maintain the orderly functioning of that regulated market or MTF and taking into account the conditions for settlement systems established in regulation 3(4).

(3) The competent authority shall take into account the oversight and, or supervision of the clearing and settlement system already exercised by the Central Bank of Malta and other central banks as overseers of clearing and settlement systems in order to avoid undue duplication of control

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Administrative
Penalties, other
administrative
measures and
Appeals.

L.N. 392.

L.N. 401.

Cap. 345.

Cap. 370.

6. (1) Where a person falling within the scope of these regulations fails to comply with any provisions of such regulations or any rules issued thereunder further implementing such regulations, the competent authority may, by notice in writing and without recourse to a court hearing, impose on such person an administrative penalty and other administrative measures in accordance with the provisions of the Financial Markets Act (MiFID and MiFIR Administrative Penalties, Measures and Investigatory Powers) Regulations, 2017 or the Investment Services Act and Banking Act (MiFID and MiFIR Administrative Penalties, Measures and Investigatory Powers) Regulations, 2017.

(2) A right of appeal to the Financial Services Tribunal shall lie from the decisions which the competent authority shall take under these regulations and the provisions of Part VI of the Financial Markets Act or Article 19 of the Investment Services Act shall apply *mutatis mutandis*.