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

L.N. 390 of 2017

FINANCIAL MARKETS ACT
(CAP. 345)

Financial Markets Act (SME Growth Markets) Regulations, 2017

IN EXERCISE of the powers conferred by article 49 of the Financial Markets 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:-

Title, scope and commencement.

1. (1) The title of these regulations is the Financial Markets Act (SME Growth Markets) Regulations, 2017.

(2) The purpose of these regulations is to transpose and implement Article 4(1) paragraphs (12), (13) and (22), and Article 33(1) to (7) 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.

Definitions.

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

"the Act" means the Financial Markets Act; Cap. 345.

"competent authority" means the Malta Financial Services Authority established by the Malta Financial Services Authority Act;

"Directive 2003/71/EC" means Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

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

"investment firm" means any legal person, other than persons to whom MiFID does not apply in terms of Article 2 of the said Directive, whose regular occupation or business is the provision of any one or more investment services to third parties

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on a professional basis;

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"Maltese investment firm" means a person licensed in terms of the Investment Services 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;

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

"Regulation 596/2014/EU" means 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, as amended from time to time;

"SME growth market" means a MTF that is registered as an SME growth market in accordance with these regulations;

"SMEs " for the purposes of these regulations, means small and medium-sized companies that had an average market capitalisation of less than EUR 200,000,000 on the basis of end-year quotes for the previous three calendar years.

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

Registration of a MTF as an SME growth market.

3. (1) The operator of a MTF may apply to the competent authority to have the MTF registered as an SME growth market.

(2) The competent authority may register the MTF as an SME growth market if it receives an application to that effect pursuant to sub-regulation (1) and is satisfied that the requirements prescribed in regulation 4 are complied with in relation to the MTF.

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(3) Within six months from the date of the submission of a properly completed application form together with the requisite documentation, the competent authority shall inform an applicant of its decision whether or not to register the MTF as an SME growth market.

Requirements for registration as an SME growth market.

4. (1) MTFs shall comply with the following requirements:

(a) at least 50% of the issuers whose financial instruments are admitted to trading on the MTF are SMEs at the time when the MTF is registered as an SME growth market and in any calendar year thereafter;

(b) appropriate criteria are set for initial and ongoing admission to trading of financial instruments of issuers on the market;

(c) on initial admission to trading of financial instruments on the market there is sufficient information published to enable investors to make an informed judgment about whether or not to invest in the financial instruments, either an appropriate admission document or a prospectus if the requirements laid down in Directive 2003/71/EC are applicable in respect of a public offer being made in conjunction with the initial admission to trading of the financial instrument on the MTF;

(d) there is appropriate ongoing periodic financial reporting by or on behalf of an issuer on the market, for example audited annual reports;

(e) issuers on the market as defined in point (21) of Article 3(1) of Regulation (EU) No 596/2014, persons discharging managerial responsibilities as defined in point (25) of Article 3(1) of Regulation (EU) No 596/2014 and persons closely associated with them as defined in point (26) of Article 3(1) of Regulation (EU) No 596/2014 comply with relevant requirements applicable to them under Regulation (EU) No 596/2014;

(f) regulatory information concerning the issuers on the market is stored and disseminated to the public;

(g) there are effective systems and controls aiming to prevent and detect market abuse on that market as required under the Regulation (EU) No 596/2014.

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(2) Without prejudice to the criteria prescribed in sub-regulation (1) above, the operator of the MTF shall also be bound by compliance with other obligations under MiFID relevant to the operation of MTFs. In addition, Maltese investment firms or market operators operating a MTF shall not be precluded from imposing additional requirements to those specified in sub-regulation (1).

Deregistration of a MTF as an SME growth market.

5. The competent authority may deregister a MTF as an SME growth market in any of the following cases:

(a) the Maltese investment firm or market operator operating the market applies for its deregistration;

(b) the requirements prescribed in sub-regulation 4(1) are no longer complied with in relation to the MTF.

Notification to ESMA.

6. Where the competent authority registers or deregisters a MTF as an SME growth market pursuant to these regulations, it shall as soon as possible notify ESMA of that registration or deregistration.

Trading of a financial instrument on more than one SME growth market.

7. Where a financial instrument of an issuer is admitted to trading on one SME growth market, the financial instrument may also be traded on another SME growth market only where the issuer has been informed and has not objected. In such a case however, the issuer shall not be subject to any obligation relating to corporate governance or initial, ongoing or *ad hoc* disclosure with regard to the latter SME growth market.

Administrative Penalties, other administrative measures and Appeals.

8. (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.

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(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 Act shall apply *mutatis mutandis*.

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