VERŻJONI ELETTRONIKA

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

L.N. 402 of 2017

MALTA FINANCIAL SERVICES AUTHORITY ACT (CAP. 330)

FINANCIAL MARKETS ACT (CAP. 345)

INVESTMENT SERVICES ACT (CAP. 370)

BANKING ACT (CAP. 371)

Markets in Financial Instruments Regulations, 2017

IN EXERCISE of the powers conferred by article 20A of the Malta Financial Services Authority Act, article 49 of the Financial Markets Act, article 12 of the Investment Services Act and article 3(1) of the Banking 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 Markets in Financial Instruments Regulations, 2017.

(2) The purpose of these regulations is to implement the relevant provisions of MiFIR as defined in regulation 2, and they shall be interpreted and applied accordingly.

(3) These regulations shall apply to persons to whom the provisions of MiFIR apply including credit institutions authorized under the Banking Act, insofar as these offer structured deposits as defined herein.

Cap. 371.

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

Definitions.

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

"the Acts" means the Malta Financial Services Authority Act, the Financial Markets Act, the Investment Services Act and the Banking Act;

Cap. 330.
Cap. 345.
Cap. 370.
Cap. 371.

"CRD" means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of

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credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

"deposit" means a credit balance which results from funds left in an account or from temporary situations deriving from normal banking transactions and which a credit institution is required to repay under the legal and contractual conditions applicable, including a fixed-term deposit and a savings deposit, but excluding a credit balance where:

(a) its existence can only be proven by a financial instrument as defined in Article 4(17) of MIFID unless it is a savings product which is evidenced by a certificate of deposit made out to a named person and which exists in a Member State on 2 July 2014;

(b) its principal is not repayable at par;

(c) its principal is only repayable at par under a particular guarantee or agreement provided by the credit institution or a third party;

"financial instrument" means an instrument included in the Second Schedule to the Investment Services Act;

Cap. 370.

"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;

"MiFIR" means Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May, 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, as may be amended from time to time, and includes any implementing measures, implementing technical standards, regulatory technical standards, guidelines and similar measures that have been or may be issued thereunder;

"Regulation (EU) No 648/2012" means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, as may be amended from time to time, and includes any implementing measures, implementing technical standards,

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regulatory technical standards, guidelines and similar measures that have been or may be issued thereunder;

"structured deposit" means a deposit which is fully repayable at maturity on terms under which interest or a premium will be paid or is at risk, according to a formula involving factors such as:

(a) an index or combination of indices, excluding variable rate deposits whose return is directly linked to an interest rate index such as Euribor or Libor;

(b) a financial instrument or combination of financial instruments;

(c) a commodity or combination of commodities or other physical or non-physical non-fungible assets; or

(d) a foreign exchange rate or combination of foreign exchange rates;

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

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

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

Applicability of MiFIR 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 MiFIR.

(2) Without prejudice to sub-regulation (1), the competent authority may, for the better implementation of the MiFIR, exercise any of the powers assigned to it under the Acts.

Rules.

5. For the better carrying out of the provisions of MiFIR and of these regulations, the competent authority may, from time to time, issue and publish Financial Market Rules, Investment Services Rules and, or Conduct of Business Rules which shall be binding on entities which are subject to the requirements of the MIFIR. These rules may lay down additional requirements and conditions in relation to these matters as the competent authority may consider appropriate including:

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(a) the operation of MiFIR or these regulations;

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

(c) any other matter arising in connection with MiFIR or these regulations.

Administrative penalties, other administrative measures and appeals.

6. (1) Where a person licensed or authorized in Malta, and falling within the scope of MIFIR, fails to comply with any provisions of that Regulation or of any Investment Services Rules and, or Conduct of Business Rules, and, or Financial Markets Rules and, or regulations implementing MIFIR, 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.

L.N. 392.

L.N. 401.

(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 article 21 of the Malta Financial Services Authority Act shall apply *mutatis mutandis.*

Cap. 330.

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