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L.N. 166 of 2020

MALTA FINANCIAL SERVICES AUTHORITY ACT (CAP. 330)

Malta Financial Services Authority Act (Transparency of securities financing transactions and of reuse) (Amendment) Regulations, 2020

IN EXERCISE of the powers conferred by article 20E the Malta Financial Services Authority 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:

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) (Amendment) Regulations, 2020 and these regulations shall be read and construed as one with the Malta Financial Services Authority Act (Transparency of securities financing transactions and of reuse), hereinafter referred to as the "principal regulations".

(2) The purpose of these regulations is to implement the relevant provisions of the SFTR.

Addition of new regulations to the principal regulations.

2. Immediately after regulation 4 of the principal regulations, there shall be added the following new regulations:

"Administrative penalties and other administrative measures.

5. (1) Without prejudice to the powers of the competent authority under the Act or any other law, the competent authority shall have the power to impose administrative penalties and other administrative measures for breaches of Article 4 and Articles 13 to 15 of the SFTR.

(2) Without prejudice to the generality of sub-regulation (1), the competent authority shall have the power to impose the following administrative penalties and other administrative measures for breaches of Articles 4 and 15 of the SFTR:

(a) an order requiring the person responsible for the breach to cease the conduct and to desist from a repetition of that conduct;

(b) a public statement which indicates the person responsible and the nature of the breach in accordance with Article 26 of SFTR;

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(c) withdrawal or suspension of the authorisation;

(d) a temporary ban against any person discharging managerial responsibilities, or any natural person who is held responsible for such a breach, from exercising management functions;

(e) maximum administrative penalties of three times the amount of the profits gained or losses avoided because of the breach where the said profits or losses can be determined by the competent authority, even if those penalties exceed the amounts referred to in paragraphs (f) and (g);

(f) in respect of a natural person, a maximum administrative penalties of five million euro (€5,000,000);

(g) in respect of legal persons, maximum administrative penalties of:

(i) five million euro (€5,000,000) or up to ten per cent (10%) of the total annual turnover of the legal person according to the last available accounts approved by the management body for breaches of Article 4 of the SFTR;

(ii) fifteen million euro (€15,000,000) or up to ten per cent (10%) of the total annual turnover of the legal person according to the last available accounts approved by the management body for breaches of Article 15 of the SFTR;

Provided that for the purpose of paragraph (g)(i) and (ii), where the legal person is a parent undertaking or a subsidiary of the parent undertaking which has to prepare consolidated financial accounts in accordance with Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income according to the relevant accounting regime according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

(3) Without prejudice to the generality of sub-regulation (1), the competent authority shall have the power to impose an administrative penalty which may not exceed one hundred and fifty thousand euro (€150,000) for each breach of Articles 13 and 14 of the SFTR.

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(4) Where the provisions of Article 4 and Articles 13 to 15 of the SFTR apply to a legal person, the competent authority may impose administrative penalties and other administrative measures on members of the management body of such legal person and to other individuals who are responsible for the breach of the said provisions.

(5) The administrative penalties and other administrative measures taken by the competent authority shall be effective, proportionate and dissuasive.

(6) When determining the type and level of administrative penalties and other administrative measures, the competent authority shall take into account all relevant circumstances, including, where appropriate:

(a) the gravity and duration of the breach;

(b) the degree of responsibility of the person responsible for the breach;

(c) the financial strength of the person responsible for the breach, by considering factors such as the total turnover in the case of a legal person or the annual income in the case of a natural person;

(d) the importance of the profits gained or losses avoided by the person responsible for the breach, insofar as they can be determined;

(e) the level of cooperation of the person responsible for the breach with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;

(f) previous breaches by the person responsible for the breach;

(g) any additional factors which the competent authority deems relevant.

Publications of the decisions of the competent authority.

6. (1) The competent authority shall publish any decision imposing an administrative penalty or other administrative measure in relation to breaches of Article 4 and Articles 13 to 15 of SFTR on its website immediately after the person subject to that decision has been informed of that decision.

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(2) The information published pursuant to sub-regulation (1) shall specify the type and nature of the breach, the identity of the person subject to the decision and any other information which the competent authority deems relevant.

(3) The provisions of sub-regulations (1) and (2) shall not apply to decisions of the competent authority imposing measures that are of an investigatory nature.

(4) Where the competent authority considers, following a case-by-case assessment, that the publication of the identity of the legal person subject to the decision, or the personal data of a natural person, would be disproportionate, or where such publication would jeopardise an ongoing investigation or the stability of the financial markets, the competent authority shall:

(a) defer publication of the decision until the reasons for that deferral cease to exist; or

(b) publish the decision on an anonymous basis where such publication ensures effective protection of the personal data concerned and, where appropriate, postpone publication of the relevant data for a reasonable period of time where it is foreseeable that the reasons for anonymous publication will cease to exist during that period; or

(c) not publish the decision in the event that the competent authority is of the opinion that publication in accordance with paragraphs (a) or (b) will be insufficient to ensure:

(i) that the stability of financial markets is not jeopardised; or

(ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.

(5) Where the decision is subject to an appeal before a national judicial, administrative or other authority, the competent authority shall also publish immediately on its website such information and any subsequent information on the outcome of such an appeal. Any decision annulling a decision subject to appeal shall also be published.

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(6) Any decision that is published in accordance with this regulation shall remain accessible on the website of the competent authority for a period of at least five (5) years after its publication:

Provided that personal data contained in any such decision shall be retained on the website of the competent authority for the period which is necessary, in accordance with the applicable data protection legislation.

Right of Appeal.

7. 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 Act shall apply *mutatis mutandis*.".

Ippubblikat mid-Dipartiment tal-Informazzjoni (doi.gov.mt) — Valletta — ***Published by the Department of Information (doi.gov.mt) — Valletta***
Mitbugħ fl-Istamperija tal-Gvern fuq karta FSC — ***Printed at the Government Printing Press on FSC certified paper***

Prezz/*Price*
€0.27