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L.N. 403 of 2017

INVESTMENT SERVICES ACT (CAP. 370)

Investment Services Act (Tied Agents) Regulations, 2017

IN EXERCISE of the powers conferred by 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:-

Citation, scope and commencement.

1. (1) The title of these regulations is the Investment Services Act (Tied Agents) Regulations, 2017.

(2) The objective of these regulations is to implement Article 29 of MiFID, as herein defined, and they shall be interpreted and applied accordingly.

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

Interpretation.

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

"Act" means the Investment Services Act; Cap. 370.

"ancillary services" means any of the services listed within the Third Schedule to the Act;

"the competent authority" means the Malta Financial Services Authority defined under article 2 of the Act;

"European investment firm" means an investment firm as defined in Article 4(1) of MIFID authorised by its European regulatory authority within the meaning of Article 5 of MIFID or authorised by a European regulatory authority in an EEA State;

"European right" means the entitlement of a person to establish a branch, or provide services in a Member State or EEA State other than that in which it has its head office -

(a) in accordance with the Treaty as applied in the Member States or EEA States; and

(b) subject to the requirements of MIFID and subject to any regulations made under the Act and, or Investment Services Rules and,or Conduct of Business

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Rules issued by the competent authority in terms of article 6 of the Act, implementing such requirements as may be applicable;

"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;

"tied agent" means a natural or legal person, who under the full and unconditional responsibility of only one Maltese investment firm or European investment firm and on whose behalf it acts, promotes investment and, or ancillary services to clients or prospective clients, receives and transmits instructions or orders from the client in respect of investment services or instruments, places instruments and, or provides investment advice to clients or prospective clients in respect of those instruments or services.

(2) Words and expressions which are also used in the Act shall have the same meaning as in the Act.

Appointment of tied agents.

3. (1) Maltese investment firms and European investment firms exercising a European right may appoint tied agents for the purposes of promoting their services, soliciting business or receiving orders from clients or potential clients and transmitting them, placing instruments and providing investment advice in respect of such instruments and services offered by the Maltese investment firm or the European investment firm.

S.L. 370.10.

(2) Tied agents may, subject to these regulations and the European Passport Rights for Investment Firms Regulations, where applicable, be established in Malta or in a Member State or EEA State.

Appointment of tied agents established in Malta.

4. (1) A Maltese investment firm or a European investment firm exercising a European right, wishing to appoint a tied agent established in Malta to carry out business in Malta or elsewhere shall apply to the competent authority for the registration of such tied agent.

(2) A Maltese investment firm or a European investment firm, exercising a European right, may appoint a tied agent established in

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Malta in terms of sub-regulation (1) only if such tied agent has been registered by the competent authority in the public register kept in terms of regulation 8.

(3) Tied agents established in Malta and registered in terms of regulation 8 shall be exempt from the provisions of article 3 of the Act.

Appointment of tied agents established in a Member State or EEA State.

5. A Maltese investment firm exercising a European right may appoint a tied agent in a Member State or EEA State only if such tied agent is registered in the public register which the Member or EEA State concerned has established for this purpose.

Obligations of tied agents.

6. (1) Tied agents shall not hold or control clients' money and, or assets.

(2) Tied agents shall only act for a Maltese investment firm or a European Investment Firm, exercising a European right in Malta, at any one time.

Responsibility of the Maltese investment firm appointing tied agents.

7. (1) Where a Maltese investment firm decides to appoint a tied agent, it remains fully and unconditionally responsible for any act or omission on the part of the tied agent when the latter is acting on behalf of the Maltese investment firm.

(2) The Maltese investment firm shall ensure that its tied agent discloses the capacity in which such tied agent is acting and the name of the Maltese investment firm which such tied agent is representing when contacting or before dealing with any client or potential client.

(3) The Maltese investment firm that appoints tied agents shall monitor the activities of its tied agents so as to ensure that they continue to comply with the requirements of these regulations, the Investment Services Rules and, or Conduct of Business Rules that may be issued by the competent authority in terms of article 6 of the Act, when acting through tied agents.

(4) The Maltese investment firm that appoints tied agents shall take adequate measures in order to avoid any negative impact that the activities of the tied agents, which are not covered by the scope of MiFID, could have on the activities carried out by the tied agents on behalf of the Maltese investment firm.

Registration of tied agents.

8. (1) The competent authority shall keep a register of all tied agents which are established in Malta and appointed by a Maltese investment firm or by a European investment firm exercising a European Right in Malta. Such register shall be updated on a regular basis and shall be accessible to the public.

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(2) The competent authority shall only admit a tied agent to the register established in sub-regulation (1) if the Maltese investment firm or the European investment firm exercising a European Right, appointing the tied agent has established and has confirmed to the competent authority that the tied agent is of sufficiently good repute and possesses appropriate general, commercial and professional knowledge and competence so as to be able to deliver the investment service or ancillary service and to communicate accurately all relevant information regarding the proposed service to the potential clients:

Provided that where the tied agent will provide investment advice, the competent authority shall itself establish whether the tied agent possesses the level of competence required by the competent authority for this purpose.

(3) The competent authority shall not register, or shall withdraw registration of a tied agent where:

(a) the activities actually carried on clearly indicate that a tied agent has opted for registration in Malta for the purpose of evading the stricter standards in force in another Member State or EEA State within the territory of which it intends to carry out or carries out the greater part of its activities; or

(b) it is no longer satisfied that the tied agent fulfils the requirements of this sub-regulation.

Additional requirements for tied agents.

9. For the better carrying out of the requirements set out in these regulations the competent authority may from time to time, issue and publish Investment Services Rules and, or Conduct of Business Rules in terms of article 6 of the Act, applicable to Maltese investment firms appointing tied agents.

Right of appeal to Financial Services Tribunal.

10. Where the competent authority has refused to register a tied agent or has withdrawn a registration issued to a tied agent in terms of regulation 8(3), it shall notify the person to whom such registration was refused or the tied agent whose registration was withdrawn of its decision, in writing and such person or tied agent, shall have a right of appeal from such decision of the competent authority to the Financial Services Tribunal and the provisions of article 19 of the Act shall apply *mutatis mutandis*.

Applicability of regulations.

S.L. 371.11.

11. The provisions of these regulations shall apply *mutatis mutandis* to a European credit institution as defined in regulation 2 of the European Passport Rights for Credit Institutions Regulations, authorised under MiFID to provide investment services and seeking to appoint a tied agent in terms of MiFID. Reference to the term "European investment firm" shall be deemed to be a reference to the

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term "European credit institution".

Administrative penalties, other administrative measures and appeals.

12. (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 Investment Services Act and Banking Act (MiFID and MiFIR Administrative Penalties, Measures and Investigatory Powers) Regulations, 2017. 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 19 of the Act shall apply *mutatis mutandis*.

Repeal of the Investment Services Act (Tied Agents) Regulations. S.L. 370.14.

13. The provisions of the Investment Services Act (Tied Agents) Regulations are hereby being repealed.

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