

Chairman
Malta Financial Services Authority

Minister for Finance

L.N. _____ of 2017

INVESTMENT SERVICES ACT
(CAP. 370)

European Passport Rights for Persons Operating Multilateral Trading Facilities
(Amendment) Regulations, 2017

IN exercise of the powers conferred by article 12 of the Investment Services Act, the Minister for Finance, acting on the advice of the Malta Financial Services Authority, has made the following regulations:

Title
·
S.L. 370.13

1. The title of these regulations is the European Passport Rights for Persons Operating Multilateral Trading Facilities (Amendment) Regulations, 2017, and these regulations shall be read and construed as one with the European Passport Rights for Persons Operating Multilateral Trading Facilities Regulations, hereinafter referred to as “the principal regulations”.

Amends the title of the principal regulations.

2. The title of the principal regulations shall be substituted by the following:

“EUROPEAN PASSPORT RIGHTS FOR PERSONS OPERATING MULTILATERAL TRADING FACILITIES OR ORGANIZED TRADING FACILITIES REGULATIONS”.

Amends regulation 1 of the principal regulations.

3. For regulation 1 of the principal regulations there shall be substituted the following:

“1. (1) The title of these regulations is the European Passport Rights for Persons Operating Multilateral Trading Facilities or Organised Trading Facilities Regulations.

(2) The objective of these regulations is to implement the relevant provisions of Articles 34(6) and (7), Article 79(2) and Articles 86(3) and (4) of MiFID as herein defined, as well as to transpose, in part, Article 6(27)(c) of Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC,

2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority), and the regulations shall be interpreted and applied accordingly.”.

Amends regulation 2 of the principal regulations.

4. Regulation 2 of the principal regulations shall be amended as follows:

- (a) for the definition “competent authority”, there shall be substituted the following:

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

- (b) in the definition “European Right”, immediately after the words, “multilateral trading facility”, there shall be inserted the words, “or an organised trading facility”;

- (c) in the definition “Home Member State or EEA State”, immediately after the words, “multilateral trading facility”, there shall be inserted the words, “or organised trading facility”;

- (d) in the definition “Host Member State or EEA State”, immediately after the words, “multilateral trading facility”, there shall be inserted the words, “or organised trading facility”;

- (e) the definition “MIFID Directive” shall be substituted by the following:

“ “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;”;

- (f) immediately after the definition “MiFID”, as amended, there shall be inserted the following new definition:

“ “multilateral system” means any system or facility in which multiple third-party buying and selling trading interests in financial instruments are able to interact in the system;”;

- (g) for the definition “Multilateral Trading Facility” there shall

be substituted the following:

“ “multilateral trading facility” or “MTF” means a multilateral system, operated by an investment services licence holder 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;” and

- (h) immediately after the definition “multilateral trading facility”, as amended, there shall be added the following new definition:

“ “organised trading facility” or “OTF” means a multilateral system which is not a regulated market or an MTF and in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract in accordance with Title II of MiFID;”.

Amends Title of Part I of the principal regulations.

- 5.** In Part I of the principal regulations, for the title thereof, there shall be substituted the following:

“Part I – Exercise of European Passport Rights by Persons operating a Multilateral Trading Facility or an Organised Trading Facility established in a Member State or EEA State”.

Amends regulation 3 of the principal regulations.

- 6.** Regulation 3 of the principal regulations shall be amended as follows:

- a. in the marginal note thereof, immediately after the words, “Multilateral Trading Facility”, there shall be inserted the words, “or an Organised Trading Facility”;
- b. in subregulation (1) thereof, immediately after the words, “multilateral trading facility”, there shall be inserted the words, “or an organised trading facility”;
- c. in paragraph (a) of subregulation (2) thereof:
 - (i) immediately after the words, “multilateral trading facility”, there shall be inserted the words, “or the organised trading facility”; and
 - (ii) for the words, “and use of its facility in Malta;”, there shall be substituted the words, “and trading on those markets by remote users, members or participants established in Malta;”.;and

- d. in paragraph (b) of subregulation (2) thereof, for the words, “operating a Multilateral Trading Facility in terms of Article 31(6) of the MiFID Directive”, there shall be substituted the words, “operating a multilateral trading facility or an organised trading facility in terms of Article 34(7) of MiFID”.

Amends Title of Part II of the principal regulations.

- 7.** In Part II of the principal regulations, for the title there shall be substituted the following:

“Part II – Exercise of Passport Rights by Persons operating a Multilateral Trading Facility or Organised Trading Facility established in Malta”.

Amends regulation 4 of the principal regulations.

- 8.** Regulation 4 of the principal regulations shall be amended as follows:

- (a) in regulation 4 thereof, there shall be inserted the following marginal note: “Exercise of passport right by persons operating a multilateral trading facility or an organised trading facility established in Malta.”;

- (b) in subregulation (1) thereof:

(i) immediately after the words, “multilateral trading facility”, there shall be inserted the words, “or an organised trading facility”, and

(ii) for the words, “and use of their systems by remote users”, there shall be substituted the words, “and trading on those markets by remote users, members or participants”;

- (c) in subregulation (2) thereof, immediately after the words, “multilateral trading facility”, there shall be inserted the words, “or organised trading facility”;

- (d) in subregulation (3) thereof, immediately after the words, “multilateral trading facility”, there shall be inserted the words, “or an organised trading facility”; and

- (e) in subregulation (4) thereof:

(i) for the words, “within a reasonable delay,”, there shall be substituted the words, “without undue delay,”; and

(ii) immediately before the word “members”, there shall be inserted the word, “remote”.

Amends regulation 5

- 9.** Regulation 5 of the principal regulations shall be amended as

of the principal follows:
regulations.

- (a) in the marginal note thereof, immediately after the words, “Multilateral Trading Facility.”, there shall be inserted the words, “or an Organised Trading Facility.”;
- (b) in subregulation (1) thereof:
 - (i) immediately after the words, “multilateral trading facility”, there shall be inserted the words, “or an organised trading facility”;
 - (ii) for the words, “the MiFID Directive,”, there shall be substituted the word, “MiFID,”; and
 - (iii) immediately after the words, “European regulatory authority”, there shall be inserted the words, “of the home Member State or EEA State”; and
- (c) in subregulation (2) thereof, for the words, “the orderly function of markets,”, there shall be substituted the words, “the orderly functioning of markets,”.

Insertion of Part IV
and Part V
to the principal
regulations.

10. Immediately after regulation 5 of the principal regulations, there shall be inserted the following new Part IV and Part V:

“Part IV - Cooperation between the competent authority and European regulatory authorities

Cooperation between
the competent
authority and
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authorities.

6. Where the operations of a trading venue that has established arrangements in Malta have become of substantial importance for the functioning of the securities markets and the protection of Maltese investors, the European regulatory authority of the home Member State or EEA State of the trading venue and the competent authority shall establish proportionate cooperation arrangements.

Part V – Administrative Penalties, other administrative measures
and Appeals

Administrative
Penalties, other
administrative
measures and
Appeals.

7. (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 (MiFID and MiFIR Administrative Penalties, Measures and Investigatory Powers).

(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*.”.