
Chairman
Malta Financial Services Authority

Minister for Finance

L.N. _____ of 2017

FINANCIAL MARKETS ACT
(CAP. 345)

Regulated Markets (Authorisation Requirements) (Amendment) Regulations, 2017

IN exercise of the powers conferred by article 49 of the Financial Markets Act, the Minister for Finance, acting on the advice of the Malta Financial Services Authority, has made the following regulations:

Title. **1.** The title of these regulations is the Regulated Markets (Authorisation Requirements) (Amendment) Regulations, 2017, and these regulations shall be read and construed as one with the Regulated Markets (Authorisation Requirements) Regulations, hereinafter referred to as “the principal regulations”.

S. L. 345.04.

Amends the title of the principal regulations. **2.** The title of the principal regulations shall be substituted by the following:
“Regulated Markets and Market Operators (Authorisation Requirements) Regulations”.

Amends regulation 1 of the principal regulations. **3.** For regulation 1 of the principal regulations, there shall be substituted the following:
“(1) The title of these regulations is the Regulated Markets and Market Operators (Authorisation Requirements) Regulations.

(2) The purpose of these regulations is to transpose and implement Article 45(1) to (3), subparagraphs (1) to (4) of Article 45(4), Article 45(5) to (8), Article 47, Article 53 and Article 54(1) to (3) of MiFID, as herein defined and 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:

regulations.

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

“ “applicant” means a person who has submitted an application to the competent authority to become authorized as a regulated market or market operator;”;

- (b) the definition “the Directive” shall be deleted;

- (c) for the definition “European regulated market”, there shall be substituted the following :

“ “European regulated market” means a regulated market as defined in Article 4(1)(21) of MiFID authorised by its European regulatory authority within the meaning of Article 44 of MiFID;”;

- (d) immediately after the definition “European regulated market”, as amended, there shall be inserted the following new definitions:

“ “market operator” means a person or persons who manages and, or operates the business of a regulated market and may be the regulated market itself;

“MiFID” means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

“Regulation (EU) No 596/2014” means Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;”.

Amends regulation 3 of the principal regulations.

- 5.** For regulation 3 of the principal regulations there shall be substituted the following:

“**3.** The Schedule sets out the authorisation requirements which must be satisfied by an applicant if it is to qualify as a regulated market or a market operator and which must be satisfied by each regulated market or market operator on a continuing and ongoing basis if it is to remain a regulated market or a market operator.”.

Amends regulation 4 of the principal regulations.

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

- (a) in subregulation (1) thereof, for the words, “an applicant or a regulated market satisfies”, there shall be substituted the words, “an applicant, a regulated market or a market operator satisfies”;

(b) in subregulation (2) thereof, for the words, “An applicant or a regulated market may”, there shall be substituted the words, “An applicant, a regulated market or a market operator may”;

(c) in subregulation (3) thereof:

(i) for the words, “an applicant or a regulated market, as the case may be,”, there shall be substituted the words, “an applicant, a regulated market or a market operator, as the case may be,”; and

(ii) for the words, “such applicant or a regulated market.”, there shall be substituted the words, “such applicant, regulated market or market operator.”;

(d) in subregulation (4) thereof:

(i) for the words, “Where an applicant or a regulated market enters”, there shall be substituted the words, “Where an applicant, a regulated market or a market operator enters”; and

(ii) for the words, “on such applicant or regulated market to”, there shall be substituted the words, “on such applicant, regulated market or market operator to”;

(e) in subregulation (5) thereof:

(i) for the words, “of the regulated market for”, there shall be substituted the words, “of the regulated market or market operator for”; and

(ii) for the words, “of the regulated market entering”, there shall be substituted the words, “of the regulated market or the market operator entering”;

(f) in subregulation (6) thereof:

(i) for the words, “not being a regulated market,”, there shall be substituted the words, “not being a regulated market or a market operator,”;

(ii) for the words, “by the applicant or the regulated market as the case may be,”, there shall be substituted the words, “by the applicant, the regulated market or the market operator as the case may be,”; and

(iii) for the words, “of the applicant or regulated market,” there shall be substituted the words, “of the applicant, the regulated market or the market operator,”; and

(g) in subregulation (7) thereof, for the words, “the regulated market shall be”, there shall be substituted the words, “the regulated market or the market operator shall be”.

7. Immediately after regulation 4 of the principal regulations there shall be inserted the following new regulation:

Insertion of a new regulation 5 to the principal Regulations.

“Administrative **5.** (1) Where a person falling within the scope of these

Penalties, other administrative measures and Appeals.

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.

(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*.”.

Amends the Schedule to the principal regulations.

8. The Schedule to the principal regulations shall be amended as follows:

(a) for paragraph 2 thereof there shall be substituted the following:

“Requirements for the management body of a market operator or regulated market

2. (1) The market operator or regulated market must be a fit and proper person to perform its functions and be of good standing.

(2) The persons who effectively direct the business and the operations of a regulated market must satisfy the fit and proper criterion, by being of sufficient good repute and possess sufficient knowledge, skills and experience to perform their duties so as to ensure the sound and prudent management and operation of the regulated market. The overall composition of the management body shall reflect an adequately broad range of experience:

Provided that in the process of authorisation of a regulated market, the person or persons who effectively direct the business and operations of an already authorised regulated market in accordance with the provisions of MiFID shall be deemed to comply with the requirements prescribed in subparagraph (2) above.

(3) Members of the management body shall, in particular, fulfil the following requirements:

(a) All members of the management body shall commit sufficient time to perform their functions in the market operator. The number of directorships a member of the management body can hold, in any legal entity, at the same time shall take into account individual circumstances and the nature, scale and complexity of the market operator’s activities.

- (b) Unless representing the Government of Malta, members of the management body of a market operators that is significant in terms of its size, internal organisation and the nature, the scope and the complexity of its activities shall not at the same time hold positions exceeding more than one of the following combinations:
 - (i) one executive directorship with two non-executive directorships;
 - (ii) four non-executive directorships;

Provided that executive or non-executive directorships held within the same group or undertakings where the market operator owns a qualifying holding shall be considered to be one single directorship;

Provided further that directorships in organisations which do not pursue predominantly commercial objectives shall be exempt from the limitation on the number of directorships a member of a management body can hold.

- (c) The competent authority may authorise members of the management body to hold one additional non-executive directorship. The competent authority shall regularly inform ESMA of such authorisations.
- (d) The management body shall possess adequate collective knowledge, skills and experience to be able to understand the market operator's activities, including the main risks.
- (e) Each member of the management body shall act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the senior management where necessary and to effectively oversee and monitor decision-making.

(4) A market operator shall devote adequate human and financial resources to the induction and training of members of the management body.

(5) A market operator which is significant in terms of its size, internal organisation and the nature, scope and complexity of its activities shall establish a nomination committee composed of members of the management body who do not perform any executive function in the market operator concerned.

(6) The nomination committee shall carry out the following functions:

- (a) identify and recommend, for the approval of the management body or for approval of the general meeting, candidates to fill management body vacancies. In doing so, the nomination committee shall evaluate the balance of knowledge, skills, diversity and experience of the management body. Further, the committee shall prepare a description of the roles and capabilities for a particular appointment, and assess the time commitment expected. Furthermore, the nomination committee shall decide on a target for the representation of the

underrepresented gender in the management body and prepare a policy on how to increase the number of the underrepresented gender in the management body in order to meet that target;

- (b) periodically, and at least annually, assess the structure, size, composition and performance of the management body, and make recommendations to the management body with regard to any changes;
- (c) periodically, and at least annually, assess the knowledge, skills and experience of individual members of the management body and of the management body collectively, and report to the management body accordingly;
- (d) periodically review the policy of the management body for selection and appointment of senior management and make recommendations to the management body.

(7) In performing its duties, the nomination committee shall, to the extent possible and on an ongoing basis, take account of the need to ensure that the management body's decision making is not dominated by any one individual or small group of individuals in a manner that is detrimental to the interests of the market operator as a whole.

(8) In performing its duties, the nomination committee shall be able to use any forms of resources it deems appropriate, including external advice.

(9) A market operator and its respective nomination committee shall engage a broad set of qualities and competences when recruiting members to the management body. A policy promoting diversity on the management body shall be put in place for this purpose.

(10) The management body of a market operator shall define and oversee the implementation of the governance arrangements that ensure effective and prudent management of an organisation, including the segregation of duties in the organisation and the prevention of conflicts of interest, and in a manner that promotes the integrity of the market.

(11) The management body shall monitor and periodically assess the effectiveness of the market operator's governance arrangements and take appropriate steps to address any deficiencies.

(12) Members of the management body shall have adequate access to information and documents which are needed to oversee and monitor management decision-making.

(13) The competent authority shall refuse authorisation if it is not satisfied that the members of the management body of the market operator are of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their functions, or if there

are objective and demonstrable grounds for believing that the management body of the market operator may pose a threat to its effective, sound and prudent management and to the adequate consideration of the integrity of the market.

(14) The market operator shall notify the competent authority of the identity of all members of its management body and of any changes to its membership, along with all the information needed to assess whether the market operator complies with subparagraphs (1) to (8) above.”;

(b) paragraph 3 thereof shall be amended as follows:

(i) for indent (a) of subparagraph (2) thereof, there shall be substituted the following:

“(a) it has available on an ongoing basis, sufficient financial resources to facilitate its orderly functioning, having regard to the nature and extent of the transactions concluded on the market and the range and degree of the risks to which it is exposed;”

(ii) for subparagraph (3) thereof, there shall be substituted the following:

“(3) The regulated market shall have transparent and non-discretionary bye-laws and procedures that provide for fair and orderly trading and establish objective criteria for the execution of orders.”

(iii) immediately after subparagraph (3) of paragraph 3 thereof, there shall be inserted the following new subparagraph (4):

“(4) A market operator shall not be allowed to execute client orders against proprietary capital, or to engage in matched principal trading on any of the regulated markets it operates.”;

(c) subparagraph (3) of paragraph 4 thereof shall be deleted.

(d) paragraph 5 thereof shall be amended as follows:

(i) in indent (a) of subparagraph (1) thereof, immediately after the words, “and procedures”, there shall be inserted the words, “including the necessary resource”;

(ii) for indent (b) of subparagraph (1) thereof, there shall be substituted the following:

“(b) monitor orders sent including cancellations and the transactions undertaken by their members or participants under their systems in order to identify infringements of those

rules, disorderly trading conditions or conduct that may indicate behaviour prohibited under Regulation (EU) No 596/2014 or system disruptions in relation to a financial instrument.”;

- (iii) for subparagraph (2) thereof, there shall be substituted the following:

“(2) A market operator of a regulated market shall:

(a) immediately inform the competent authority of significant infringements of its rules or disorderly trading conditions or conduct that may indicate behavior that is prohibited under Regulation (EU) No. 596/2014 or system disruptions in relation to a financial instrument:

Provided that the competent authority shall communicate this information to ESMA and to the competent authorities of the other Member States or EEA States;

Provided further that in relation to conduct that may indicate behavior that is prohibited under Regulation (EU) No. 596/2014, the competent authority shall be convinced that such behavior is being or has been carried out before it notifies the competent authorities of the other Member States or EEA States and ESMA;

(b) supply the relevant information without undue delay to the authority competent for the investigation and prosecution of market abuse on the regulated market and to provide full assistance to the latter in investigating and prosecuting market abuse occurring on or through the systems of the regulated market.”.