

Suppliment tal-Gazzetta tal-Gvern ta' Malta Nru. 19,736, 7 ta' Marzu, 2017

Taqsimha B

L.N. 77 of 2017

**MALTA FINANCIAL SERVICES AUTHORITY ACT
(CAP. 330)**

Malta Financial Services Authority Act (Indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds) Regulations, 2017

IN exercise of the powers conferred by article 20A of the Malta Financial Services Authority Act, the Minister for Finance, acting on the advice of the Malta Financial Services Authority, has made the following regulations:-

1. (1) The title of these regulations is the Malta Financial Services Authority Act (Indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds) Regulations, 2017. Citation and scope.

(2) The purpose of these regulations is to implement the relevant provisions of the Benchmarks Regulation as herein defined.

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

"the Act" means the Malta Financial Services Authority Act; Cap. 330.

"administrator" means a natural or legal person that has control over the provision of a benchmark;

"benchmark" means any index by reference to which the amount payable under a financial instrument or a financial contract, or the value of a financial instrument, is determined, or an index that is used to measure the performance of an investment fund with the purpose of tracking the return of such index or of defining the asset allocation of a portfolio or of computing the performance fees;

"Benchmarks Regulation" means Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 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;

"financial contract" means:

(a) any credit agreement as defined in point (c) of Article 3 of Directive 2008/48/EC;

(b) any credit agreement as defined in point (3) of Article 4 of Directive 2014/17/EU;

"financial instrument" means any of the instruments listed in Section C of Annex I to Directive 2014/65/EU for which a request for admission to trading on a trading venue, as defined in point (24) of Article 4(1) of Directive 2014/65/EU, has been made or which is traded on a trading venue as defined in point (24) of Article 4(1) of Directive 2014/65/EU or via a systematic internaliser as defined in point (20) of Article 4(1) of that Directive;

"index" means any figure:

(a) that is published or made available to the public;

(b) that is regularly determined:

(i) entirely or partially by the application of a formula or any other method of calculation, or by an assessment; and

(ii) on the basis of the value of one or more underlying assets or prices, including estimated prices, actual or estimated interest rates, quotes and committed quotes, or other values or surveys;

"provision of a benchmark" means:

(a) administering the arrangements for determining a benchmark;

(b) collecting, analysing or processing input data for the purpose of determining a benchmark; and

(c) determining a benchmark through the application of a formula or other method of calculation or by an assessment of input data provided for that purpose;

"supervised entity" means any of the following:

(a) a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council;

(b) an investment firm as defined in point (1) of Article 4(1) of Directive 2014/65/EU;

(c) an insurance undertaking as defined in point (1) of Article 13 of Directive 2009/138/EC of the European Parliament and of the Council;

(d) a reinsurance undertaking as defined in point (4) of Article 13 of Directive 2009/138/EC;

(e) a UCITS as defined in Article 1(2) of Directive 2009/65/EC or, where applicable, a UCITS management company as defined in point (b) of Article 2(1) of that Directive;

(f) an alternative investment fund manager (AIFM) as defined in point (b) of Article 4(1) of Directive 2011/61/EU of the European Parliament and of the Council;

(g) an institution for occupational retirement provision as defined in point (a) of Article 6 of Directive 2003/41/EC of the European Parliament and of the Council;

(h) a creditor as defined in point (b) of Article 3 of Directive 2008/48/EC for the purposes of credit agreements as defined in point (c) of Article 3 of that Directive;

(i) a non-credit institution as defined in point (10) of Article 4 of Directive 2014/17/EU for the purposes of credit agreements as defined in point (3) of Article 4 of that Directive;

(j) a market operator as defined in point (18) of Article 4(1) of Directive 2014/65/EU;

(k) a central counterparty as defined in point (1) of Article 2 of Regulation (EU) No 648/2012 of the European Parliament and of the Council;

(l) a trade repository as defined in point (2) of Article 2 of Regulation (EU) No 648/2012;

(m) an administrator.

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

(3) In the event that there is any conflict between any of these regulations and the provisions of the Benchmarks Regulation, the provisions of the Benchmarks Regulation shall prevail.

Competent
authority.
Cap. 330.

3. The Malta Financial Services Authority established by the Act shall be the designated competent authority in Malta for the purposes of implementing the relevant provisions of the Benchmarks Regulation and these regulations, and any reference in these regulations to the competent authority shall be read and construed accordingly.

Applicability of
the EU
Regulation to
the competent
authority.

4. (1) The competent authority shall exercise and fulfill all the functions, obligations and powers which are required or may be imposed on competent authorities in accordance with the Benchmarks Regulation and it shall satisfy all the obligations and requirements imposed on competent authorities by the Benchmarks Regulation.

(2) Without prejudice to the provisions of sub-regulation (1), the competent authority may, for the better implementation of the Benchmarks Regulation, exercise any of the powers assigned to it under the Act in relation to persons acting as administrators and to supervised entities.

