

L.N. 344 of 2012

**FINANCIAL MARKETS ACT
(CAP. 345)**

Financial Markets Act (Short Selling) Regulations, 2012

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

1. (1) The title of these regulations is the Financial Markets Act (Short Selling) Regulations, 2012. Citation and scope.

(2) The purpose of these regulations is to implement the relevant provisions of the EU Regulation on short selling and certain aspects of credit default swaps as herein defined, and they shall be interpreted and applied accordingly.

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

"the Act" means the Financial Markets Act; Cap. 345.

"credit default swaps" means a derivative contract in which one party pays a fee to another party in return for a payment or other benefit in the case of a credit event relating to a reference entity and of any other default, relating to that derivative contract, which has a similar economic effect;

"EU Regulation" means Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps, as amended from time to time;

"Financial Services Tribunal" means the tribunal established in terms of article 21 of the Malta Financial Services Authority Act; and Cap. 330.

"short selling", in relation to a share or debt instrument, means any sale of the share or debt instrument which the seller does not own at the time of entering into the agreement to sell including such a sale where at the time of entering into the agreement to sell the seller has borrowed or agreed to borrow the share or debt instrument for delivery at settlement, not including:

(a) a sale by either party under a repurchase agreement where one party has agreed to sell the other a security at a

specified price with a commitment from the other party to sell the security back at a later date at another specified price;

(b) a transfer of securities under a securities lending agreement; or

(c) entry into a futures contract or other derivative contract where it is agreed to sell securities at a specified price at a future date.

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

Competent authority.

3. The Malta Financial Services Authority, established by the Malta Financial Services Authority Act, shall be the designated competent authority in Malta for the purposes of implementing the relevant provisions of the EU Regulation, 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 all the functions, obligations and powers and shall satisfy all the requirements imposed on competent authorities by the EU Regulation.

(2) Without prejudice to sub-regulation (1), the competent authority may, for the better implementation of the EU Regulation, exercise any of the powers assigned to it under the Act in relation to persons engaged in short selling and, or who trade in credit default swaps.

Financial Market Rules.

5. For the better carrying out of the provisions of the EU Regulation and of these regulations, the competent authority may, from time to time, issue and publish Financial Market Rules which shall be binding on all persons engaged in short selling, and, or who trade in credit default swaps and other financial instruments as may be specified therein. Such rules may lay down additional requirements and conditions in relation to short selling and trading in credit default swaps, and any other matters as the competent authority may consider appropriate including:

(a) the operation of the EU Regulation or of these regulations;

(b) any matter relating to the functions, obligations and powers of the competent authority under the EU Regulation; and

(c) any other matter arising in connection with the EU Regulation or these regulations.

6. The provisions of the EU Regulation shall apply to persons engaged in short selling and, or who trade in credit default swaps in or from Malta and such persons shall exercise all the obligations and satisfy all the requirements imposed on such persons by the said EU Regulation.

Applicability of the EU Regulation to persons engaged in short selling, and, or who trade in credit default swaps.

7. Where a person engaged in short selling and, or who trades in credit default swaps contravenes or fails to comply with any provisions of the EU Regulation, these regulations and any Financial Markets Rules issued thereunder, the competent authority may, by notice in writing and without recourse to a court hearing, impose on such person an administrative penalty not exceeding one hundred and fifty thousand euro (€150,000).

Administrative penalties.

8. A right of appeal to the Financial Services Tribunal shall lie from a decision of the competent authority:

Appeals.

(a) to impose a penalty in terms of regulation 7; or

(b) to apply the provisions of articles 18 to 21 and 23 of the EU Regulation.

