

L.N. 107 of 2005**PREVENTION OF FINANCIAL MARKETS ABUSE ACT, 2005
(ACT NO IV OF 2005)****Prevention of Financial Markets Abuse
(Market Practices and Manipulative Behaviour)
Regulations, 2005**

IN exercise of the powers conferred by article 25 of the Prevention of Financial Markets Abuse Act, 2005, the Prime Minister and Minister of Finance, after consultation with the Malta Financial Services Authority, has made the following regulations:-

1. (1) These regulations may be cited as the Prevention of Financial Markets Abuse (Market Practices and Manipulative Behaviour) Regulations, 2005. Citation and commencement.

(2) These regulations shall come into force on the 1st April, 2005.

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

“the Act” means the Prevention of Financial Markets Abuse Act;

“the Community” means the European Community being that organisation established by the Treaty of Rome in 1957 and amended institutionally and otherwise in 1986 by the Single European Act, in 1993 by the Treaty on European Union, in 1997 by the Treaty of Amsterdam and in 2001 by the Treaty of Nice and as amended by accession agreements and as may be further amended from time to time;

“implementing measures” means any acts and Directives issued under the Market Abuse Directive and as amended from time to time, including in particular for the purpose of these regulations the provisions of Articles 4 and 5 of Commission Directive 2003/124/EC of 22 December 2003 implementing the Market Abuse Directive as regards the definition and public

disclosure of inside information and the definition of market manipulation;

and the provisions of Articles 2 and 3 of Commission Directive 2004/72/EC of 29 April 2004 implementing the Market Abuse Directive as regards accepted market practices, the definition of inside information in relation to derivatives on commodities, the drawing up of lists of insiders, the notification of managers' transactions and the notification of suspicious transactions.

(2) Words and expressions in these regulations which are also used in the Act have the same meanings as in the Act.

Scope.

3. The objective of these regulations is to implement the relevant provisions of the Market Abuse Directive and all related implementing measures, and these regulations shall be interpreted and applied accordingly.

PART I – MARKET PRACTICES

Factors to be taken into account when considering market practices.

4. (1) The competent authority shall, when assessing whether a practice relating to certain transactions or orders to trade in paragraph (a) of sub-article (2) of article 8 of the Act or derivatives on commodities in paragraph (a) of sub-article 6 of article 6 of the Act amounts to market manipulation or constitutes an acceptable market practice, take the following non-exhaustive factors into account:

(a) the level of transparency of the relevant market practice to the whole market;

(b) the need to safeguard the operation of market forces and the proper interplay of the forces of supply and demand and in particular the competent authority shall analyse the impact of the relevant market practice against the main market parameters, such as the specific market conditions before carrying out the relevant market practice, the weighted average price of a single session or the daily closing price;

(c) the degree to which the relevant market practice has an impact on market liquidity and efficiency;

(d) the degree to which the relevant practice takes into account the trading mechanism of the relevant market and enables market participants to react properly and in a timely manner to the new market situation created by that practice;

(e) the risk inherent in the relevant practice for the integrity of, directly or indirectly, related markets, whether regulated or not, in the relevant financial instrument within the whole Community;

(f) the outcome of any investigation of the relevant market practice by any foreign authority, in particular whether the relevant market practice breached rules or regulations designed to prevent market abuse, or codes of conduct, be it on the market in question or on directly or indirectly related markets within the Community;

(g) the structural characteristics of the relevant market including whether it is regulated or not, the types of financial instruments traded and the type of market participants, including the extent of retail investors participation in the relevant market.

(2) The provisions of sub-regulation (1) shall be exercised by the competent authority without prejudice to any collaboration with other relevant local authorities or entities necessary or deemed necessary by the competent authority.

(3) The competent authority shall not assume new or emerging market practices to be unacceptable simply because they have not been previously accepted by it.

(4) The competent authority shall review regularly the market practices that it has accepted, in particular taking into account significant changes to the relevant market environment, such as changes to trading rules or to market infrastructure.

5. (1) The competent authority shall, when considering whether to accept or continue to accept a particular market practice relating to certain transactions or orders to trade in paragraph (a) of sub-article (2) of article 8 of the Act and derivatives on commodities in paragraph (a) of sub-article 6 of article 6 of the Act, consult as appropriate relevant bodies such as representatives of issuers, financial services providers, consumers, other local authorities and market operators. The consultation procedure shall include consultation of foreign authorities, in particular where there exist comparable markets, such as in structures, volume, type of transactions.

Consultation procedures and disclosure of decisions.

(2) This duty in sub-regulation (1) above shall be without prejudice to the duty of consultation required in Article 11 of the Market Abuse Directive.

(3) Upon the conclusion of any appeal proceedings or the lapse of time required to lodge such an appeal, the competent authority

shall publicly disclose its decisions regarding the acceptability of the market practice concerned, including appropriate descriptions of such practices and shall transmit its decisions as soon as possible to the Committee of European Securities Regulators which shall make them immediately available on its website. The disclosure shall include a description of the factors taken into account in determining whether the relevant practice is regarded as acceptable, in particular where different conclusions have been reached regarding the acceptability of the same practice on different Member States' and EEA States' markets.

(4) When investigatory actions on specific cases have already started, the consultation procedures set out in sub-regulations (1) to (3) may be delayed until the end of such investigation and possible related sanctions.

(5) A market practice which was accepted following the consultation procedures set out in sub-regulations (1) to (3) shall not be changed without using the same consultation procedures.

PART II – MANIPULATIVE BEHAVIOUR

Manipulative behaviour related to false or misleading signals and to price securing.

6. For the purposes of properly applying the prohibition of market manipulation regarding transactions or orders to trade in the Act and without prejudice to the examples set out therein, market participants and the competent authority shall take the following non-exhaustive signals into account when examining transactions or orders to trade:-

(a) the extent to which orders to trade given or transactions undertaken represent a significant proportion of the daily volume of transactions in the relevant financial instrument on the regulated market concerned, in particular when these activities lead to a significant change in the price of the financial instrument;

(b) the extent to which orders to trade given or transactions undertaken by persons with a significant buying or selling position in a financial instrument lead to significant changes in the price of the financial instrument or related derivative or underlying asset admitted to trading on a regulated market;

(c) whether transactions undertaken lead to no change in beneficial ownership of a financial instrument admitted to trading on a regulated market;

(d) the extent to which orders to trade given or transactions undertaken include position reversals in a short period and represent a significant proportion of the daily volume of transactions in the

relevant financial instrument on the regulated market concerned, and might be associated with significant changes in the price of a financial instrument admitted to trading on a regulated market;

(e) the extent to which orders to trade given or transactions undertaken are concentrated within a short time span in the trading session and lead to a price change which is subsequently reversed;

(f) the extent to which orders to trade given change the representation of the best bid or offer prices in a financial instrument admitted to trading on a regulated market, or more generally the representation of the order book available to market participants, and are removed before they are executed; and

(g) the extent to which orders to trade are given or transactions are undertaken at or around a specific time when reference prices, settlement prices and valuations are calculated and lead to price changes which have an effect on such prices and valuations:

Provided that these non exhaustive factors should not necessarily be deemed in themselves to constitute market manipulation.

7. For the purposes of properly applying the prohibition of market manipulation regarding transactions or orders to trade which employ fictitious devices or other forms of deception or contrivance in the Act and without prejudice to the examples set out therein, market participants and the competent authority shall take the following non-exhaustive signals into account when examining transactions or orders to trade:-

Manipulative behaviours related to the employment of fictitious devices or any other form of deception or contrivance.

(a) whether orders to trade given or transactions undertaken by persons are preceded or followed by dissemination of false or misleading information by the same persons or persons linked to them;

(b) whether orders to trade are given or transactions are undertaken by persons before or after the same persons or persons linked to them produce or disseminate research or investment recommendations which are erroneous or biased or demonstrably influenced by material interest:

Provided that these non exhaustive factors should not necessarily be deemed in themselves to constitute market manipulation.

