

FINANCIAL MARKET RULES

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REVISIONS LOG

VERSION	DATE ISSUED	DETAILS
2.00	19.12.2017	Financial Markets Rules issued in preparation for the coming into force of Regulation (EU) 600/2014 and applicable from 3 January 2018
2.02	11.04.2018	New Section 14 under Part II of the Rules, relating to requirements for auditors of regulated markets and DRSPs; New Section 6 under Part V of the Rules, implementing ESMA's Guidelines on Cooperation between authorities under Articles 17 and 23 of Regulation (EU) No 909/2014; New Section 7 under Part V of the Rules
2.03	04.01.2019	Updated Section 7 of Part II of the Rules relating to Fees
2.04	05.06.2019	Updated to transpose Directive (EU) 2017/828, amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement
2.05	28.06.2019	Updated Section 4 of Part V of the Rules relating to the internalised settlement reporting obligation under Article 9 of CSDR
2.06	31.07.2019	Introduced Part VI in relation to CCPs. New Section 1 under Part VI of the Rules relating to EMIR Anti-procyclicality Margin measures for Central Counterparties and conflict of interest management
2.07	31.07.2019	Introduced Part VII: Other New Section 1 relating to the application of C6 and C7 of Annex 1 of MiFID II
2.08	20.09.2019	Updated Part VI and VII and introduced Part VIII relating to the regulation of benchmarks Updated Part V of the Rules related to CSDR
2.09	08.06.2020	New Section 5 under Part V of the Rules related to the measures preventing settlement fails in accordance with Article 6(2) of CSDR
2.10	09.09.2020	Updated Section 9 of Part V of the Rules Related to CSDR relating to shareholder identification, the transmission of information and the facilitation of the exercise of shareholder rights
2.11	06.01.2021	New Section 3 Under Part VI of the Rules to implement the ESRB's recommendation on Liquidity Risks arising from Margin Calls
2.12	25.01.2021	New Section 8 under Part I of the Rules relating to technology arrangements, ICT and security risk management, and outsourcing arrangements
2.13	21.04.2021	Introduced Part IX in relation to Securities Financing Transactions. New Section implementing ESMA's Guidelines relating to the reporting of Securities Financing Transactions.
2.14	01.07.2021	New definitions introduced, and existing ones amended. New Rules introduced: R4-2.8 and R4-5.4. Rule R5-9.5 Amended

2.15	20.07.2021	New Section 4 under Part VI of the Rules related to interoperability arrangements. New Section 5 under Part VI of the Rules related to CCP Colleges. New Section 6 under Part VI of the Rules related to Financial Market Infrastructures in respect of Central Counterparties.
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Part I: General

Section 1: Definitions

“Act” means the Financial Markets Act, Chapter 345 of the Laws of Malta

“Authority” means the Malta Financial Services Authority as established by the Malta Financial Services Authority Act, Chapter 330 of the Laws of Malta

“Benchmarks Regulation” means Regulation(EU) 2016/1011 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) N° 596/2014

“Central Counterparty” or “CCP” means a CCP as defined in point (1) of Article 2 of Regulation (EU) N° 648/2012

“Central Securities Depository” or “CSD” means a CSD as defined in Article 2(1)(1) of Regulation (EU) N° 909/2014

“Commission” mean the European Commission

“Commission Delegated Regulation (EU) 2017/583” means Commission Delegated Regulation (EU) 2017/583 of 14 July 2016 supplementing Regulation (EU) N° 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives

“Company” means, for the purposes of Section 8 of Part V of these Rules, a listed company to which the CSD provides services of safekeeping of shares, administration of shares and maintenance of securities accounts on behalf of shareholders or other persons;

“Compliance Officer” shall refer to the person appointed by the Trading Venue or CSD and authorised by the MFSA

“CSDR” means Regulation (EU) N° 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) N° 236/2012

“DRSP” means Data Reporting Services Providers and include the activity of Approved Publication Arrangement (‘APAs’), Consolidated Tape Providers (‘CTPs’) and Approved Reporting Mechanisms (‘ARMs’) as defined in Article 4(1)(52), 4(1)(53), 4(1)(54) of MiFID II respectively

“EMIR” means Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories

“Entities” means financial and non-financial counterparties as defined in Article 2 of EMIR and Article 3 of SFTR

“ESMA” means the European Securities and Markets Authority

“ESRB” means the European Systemic Risk Board

“Intermediary” means, for the purposes of Part V of these Rules, a person, such as an investment firm as defined in point (1) of Article 4(1) of Directive 2014/65/EU, 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 and a central securities depository as defined in point (1) of Article 2(1) of Regulation (EU) No 909/2014 of the European Parliament and of the Council, which provides services of safekeeping of shares, administration of shares or maintenance of securities accounts on behalf of shareholders or other persons;

“MiFID II” 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

“MiFIR” means Regulation (EU) N° 600/2014 of the European Parliament and of the Council of 15 May 2014 on Markets in Financial Instruments and amending Regulation (EU) N° 648/2012

“Regulated Market” or “RM” means a regulated market as defined in Article 4(1)(21) of MiFID II

“Multilateral Trading Facility” or “MTF” means a multilateral trading facility as defined in Article 4(1)(22) of MiFID II

“Organised Trading Facility” or “OTF” means an organised trading facility as defined in Article 4(1)(23) of MiFID II

“Rules” means these Financial Market Rules

“Securities Financing Transaction” means (a) a repurchase transaction; (b) securities or commodities lending and securities or commodities borrowing; (c) a buy-sell back transaction or sell-buy back transaction; (d) a margin lending transaction.

“SFTR” means Regulation (EU) 2015/2365 on securities lending and repo.

“Trading Venue” means a trading venue as defined in Article 4(1)(24) of MiFID II

“Without delay” means, for the purposes of Section 8 of Part V of these Rules, within the timeframes stipulated in Commission Implementing Regulation (EU) 2018/1212.

“IFD/IFR” indicates the prudential framework for Investment Firms, consisting of the Directive (EU) 2019/2034 (IFD) and the Regulation (EU) 2019/2033 (IFR)

Section 2: Applicability

- R1-2.1 These Financial Market Rules apply to Trading Venues, DRSPs and CSDs, unless otherwise stated.

Section 3: Form and Method of Notification

- R1-3.1 Where a Trading Venue, DRSP or a Central Securities Depository is required to give any notice or information to the Authority, it must do so in writing.
- R1-3.2 Unless otherwise stated, any notification required from a Trading Venue, DRSP or a Central Securities Depository must be delivered to the Authority by post, electronic mail or any other conventional means of communication, as may reasonably be required by the Authority.

Section 4: Time of Notification

- R1-4.1 Where in these Financial Market Rules a Trading Venue, DRSP or a Central Securities Depository is required to give any notice or information **“immediately”, unless otherwise indicated by the Authority, this shall be construed as being no later than one business day from the occurrence or from the date when the Trading Venue, DRSP or Central Securities Depository first becomes aware of the event requiring such Trading Venue, DRSP or Central Securities Depository to give notice or submit information to the Authority.**
- R1-4.2 Any notice or information required to be submitted to the Authority by a Trading Venue, DRSP or a Central Securities Depository must be received by the Authority by no later than the end of the period stipulated or implied for the notification thereof.

Section 5: Change in Notification Details

- R1-5.1 Any change in the postal address, telephone number, e-mail address or any other contact details in relation to a Trading Venue, DRSP or Central Securities Depository must be notified to the Authority immediately.

Section 6: Compliance

- R1-6.1 Trading Venues and Central Securities Depositories shall establish, implement and maintain adequate policies and procedures designed to

detect any risk of failure to comply with their obligations under the Act, the Regulations issued thereunder and these Financial Market Rules, as well as with their obligations under other applicable legislation, as well as to detect the associated risks, and shall put in place adequate measures and procedures designed to minimize such risk and to enable the MFSA to exercise its powers effectively.

R1-6.2 Trading Venues and Central Securities Depositories shall establish and maintain a permanent and effective compliance function which operates independently, and which has the following responsibilities:

i. to monitor and, on a regular basis, to assess the adequacy and effectiveness of the measures and procedures put in place in accordance with the requirements of R1-6.1, and the actions taken to address any deficiencies in **the Trading Venue or Central Securities Depository's compliance with its obligations**;

ii. to advise and assist the relevant persons to comply with the Trading Venue **or Central Securities Depository's legal and regulatory obligations**.

R1-6.3 In order to enable the compliance function to discharge its responsibilities properly, the Trading Venue or Central Securities Depository shall ensure that the following conditions are satisfied:

i. the compliance function shall have the necessary authority, resources, expertise, and access to all relevant information;

ii. a Compliance Officer shall be appointed and shall be responsible for the compliance function and for any reporting as to compliance required by these Financial Market Rules;

iii. the relevant persons involved in the compliance function shall not be involved in the performance of services or activities which they monitor;

iv. the method of determining the remuneration of the relevant persons involved in the compliance function shall not compromise their objectivity and shall not be likely to do so.

R1-6.4 Moreover, with respect to point (ii) of R1-6.3, the appointment of an **individual as Compliance Officer is subject to MFSA's prior approval**.

Section 7: Reporting and Record Keeping

R1-7.1 Trading Venues and Central Securities Depositories shall arrange for records to be kept of all services and activity undertaken by it which shall be sufficient

to enable MFSA to monitor compliance with the requirements under the Act, the Regulations issued thereunder and these Financial Market Rules.

R1-7.2 In complying with these Financial Market Rules, Trading Venues shall refer to the reporting requirements and to the pre-trade and post-trade transparency obligations established by:

- i. MiFIR;
- ii. Delegated Acts issued under MiFIR and MiFID; and
- iii. the Act and rules and regulations issued thereunder.

R1-7.3 Trading Venues and Central Securities Depositories shall maintain sufficient records to be able to demonstrate compliance with the conditions of their authorisation.

R1-7.4 Trading Venues and Central Securities Depositories shall retain all the records required under these Financial Market Rules for a period of at least 5 years.

The MFSA, may, however, require Trading Venues and Central Securities Depositories to retain any or all records for such longer period if that is necessary to enable MFSA to exercise its supervisory functions.

R1-7.5 The records shall be retained in a medium that allows the storage of information in a way accessible for future reference by the MFSA and in such a form and manner that the following conditions are met:

- i. MFSA must be able to access them readily and to reconstitute each key stage of the processing of each transaction;
- ii. it must be possible for any corrections or other amendments, and the contents of the records prior to such corrections or amendments, to be easily ascertained;
- iii. it must not be possible for the records otherwise to be manipulated or altered.

Section 8: Technology Arrangements, ICT and Security Risk Management and Outsourcing Arrangements

R1-8.1 Trading Venues, DRSPs and CSDs are expected to establish and maintain internal governance arrangements on ICT and Security Risk Management, including cybersecurity and outsourcing.

R1-8.2 In complying with these Financial Market Rules, Trading Venues, DRSPs and CSDs shall refer to the harmonised baseline [guidance on Technology Arrangements to authorised entities provided by the Authority](#), without prejudice to sector-specific legislation, including delegated measures, sector specific guidance, and all other EU and national legislation.

Section 9: Waiver of Financial Market Rules

R1-9.1 The Authority may, at its discretion and upon application being made by a Trading Venue or Central Securities Depository, issue a waiver allowing any Financial Market Rule to be rendered inapplicable to such Trading Venue, DRSP or Central Securities Depository, or allow any Financial Market Rule to be applied by such Trading Venue, Central Securities Depository or DRSP with such modification/s as may be specified by the Authority.

R1-9.2 Before granting a waiver or modification to a Financial Market Rule, the Authority must be satisfied that:

- a. compliance by the Trading Venue, DRSP or Central Securities Depository with the Financial Market Rule, would be unduly burdensome or would not achieve the purpose for which the Financial Market Rule was made;
- b. the waiver or modification would not jeopardise persons whose interests such Financial Market Rule is designed to protect; and
- c. the waiver or modification would not conflict with EU or Maltese legislation, or any rules or regulations issued thereunder.

R1-9.3 Any application made to the Authority by a Trading Venue, DRSP or Central Securities Depository for the waiver or modification of any Financial Market Rule must be made formally and in writing, setting out:

- a. the particulars of the waiver or modification requested, and
- b. the reasons which, in the opinion of the applicant, justify the application.

R1-9.4 The Authority may, prior to granting any waiver or modification to a Financial Market Rule to a Trading Venue, DRSP or Central Securities Depository, request from such Trading Venue, DRSP or Central Securities Depository, whatever supplementary information and/or documentation that it may deem necessary, which information must be provided by the Trading Venue, DRSP or Central Securities Depository within the time indicated by the Authority.

R1-9.5 Any waiver or modification to a Financial Market Rule granted by the Authority shall be notified to the applicant Trading Venue, DRSP or Central Securities Depository in writing. The Authority may, at any time and at its sole discretion, amend, alter or revoke such waiver or modification to a Financial Market Rule granted to a Trading Venue, DRSP or Central Securities Depository by notification in writing to the relevant Trading Venue, DRSP or Central Securities Depository.

Part II: Notification Requirements

Section 1: General

R2-1.1 The Authority shall immediately be informed of any change and/or any material information concerning a Trading Venue, DRSP or Central Securities Depository, its management or its operation.

Section 2: Constitutional Documents

R2-2.1 Prior to circulating any notice or other document proposing any amendment to its constitutional documents or directives, to any group or class of persons which has the power to make such amendment or whose consent or approval is required before such amendment can be made, a Trading Venue or Central Securities Depository shall give notice of such proposed amendment to the Authority, providing the following information:

- a. details of the proposed amendment/s;
- b. the rationale behind the proposed amendment/s; and
- c. a description of the group or class of persons to whom the document proposing the amendment is to be circulated.

- R2-2.2 Once the proposed amendment referred to in Rule R2-2.1 above is duly approved, a Trading Venue or Central Securities Depository shall immediately inform the Authority of such approval. A Trading Venue or Central Securities Depository shall also inform the Authority about the date on which the approved amendment is to become or became effective

Section 3: Bye - Laws

- R2-3.1 Where a Trading Venue or Central Securities Depository proposes to *inter alia* alter or revoke any of its bye-laws, or make or issue new bye-laws, the prior approval of the Authority must be obtained. In satisfaction of this requirement, the Trading Venue or Central Securities Depository shall formally submit in writing any such altered or revoked or new bye-law to the Authority for its consideration, together with the following information:
- a. details of the proposed alteration or revocation or new bye-law;
 - b. the reasons for the proposed alteration or revocation or new bye-law; and
 - c. a draft copy of the bye-laws of the Trading Venue or Central Securities Depository reflecting such alteration or revocation or new bye-law.

Section 4: Officers

- R2-4.1 Where any officer of a Trading Venue or Central Securities Depository has resigned or is removed or disqualified from such office, the Trading Venue or Central Securities Depository must immediately provide the Authority with **notice of any such event. Such notice shall contain the person's full name and surname and the reasons for such resignation, removal or disqualification.**
- R2-4.2 Where an officer of a Trading Venue or Central Securities Depository:
- a. is the subject of disciplinary action relating to his/ her alleged misconduct; or
 - b. resigns as a result of an investigation into his/ her alleged misconduct; or
 - c. is dismissed for reasons related to misconduct;

that Trading Venue or Central Securities Depository must immediately give notice to the Authority, specifying:

- i. the name of the officer;
- ii. the details of the acts or alleged acts of misconduct conducted by that officer; and
- iii. the details of any disciplinary action which has been or is proposed to be taken by the Trading Venue or Central Securities Depository in relation to that officer.

Section 5: Committee

R2-5.1 Where the governing body of a Trading Venue or Central Securities Depository delegates any of its functions to a committee, or appoints a committee to manage or oversee the carrying out of any of its functions, the Trading Venue or Central Securities Depository must immediately notify the Authority of that event. Such notice shall include:

- a. the names of the members of that committee; and
- b. the terms of reference of that committee (including a description of any powers delegated to that committee and any conditions or limitations placed on the exercise of those powers).

R2-5.2 A Trading Venue or Central Securities Depository shall immediately notify the Authority, where:

- a. there is any change in the composition or the terms of reference of any committee referred to in Rule R2-5.1 above; or
- b. the committee referred to in Rule R2-5.1 above, is dissolved.

In the event of any change in the composition or terms of reference of a committee, the Trading Venue or Central Securities Depository shall also provide the Authority with all the relevant information relating to such change, where applicable.

R2-5.3 The delegation of any function by a Trading Venue or Central Securities Depository to a committee shall not affect any obligation or responsibility imposed upon the Trading Venue or Central Securities Depository by the Act or otherwise.

Section 6: Arrangements for Fulfilment of Functions

- R2-6.1 Where a Trading Venue or Central Securities Depository proposes to make any arrangements for any of its functions to be performed on its behalf by another person, the Trading Venue or Central Securities Depository shall, prior to making the said arrangements, obtain the approval of the Authority. **The Trading Venue's or Central Securities Depository's formal written request for approval shall contain the following information:**
- a. the reasons for the proposed arrangement;
 - b. the reasons why, in its opinion, the Trading Venue or Central Securities Depository is satisfied that it will continue to fulfil the applicable recognition requirements, once the arrangement is in place;
 - c. where the arrangement is to be offered on the basis of a written invitation to tender, a copy of that invitation to tender; and
 - d. where the arrangement is to be formulated into a written agreement, a draft copy of that agreement.

- R2-6.2 A Trading Venue or Central Securities Depository must immediately give notice to the Authority where it makes or proposes to make any arrangement to perform any function on behalf of another Trading Venue or Central Securities Depository.

Section 7: Fees

- R2-7.1 A Trading Venue or Central Securities Depository must provide the Authority with a summary of:
- a. any proposal to change the fees or charges levied by the Trading Venue or Central Securities Depository for services provided, at the same time as the proposal is communicated to the persons concerned; and
 - b. any such change, no later than the date when it is published or notified to the persons concerned.

Section 8: Complaints and Breaches

- R2-8.1 The Trading Venue or Central Securities Depository shall hold a register of the complaints arising in connection with the performance of any of its functions, or its failure to perform any such function.

- R2-8.2 Where the investigation of any complaint arising in connection with the performance by a Trading Venue or Central Securities Depository of any of its functions, the Trading Venue or Central Securities Depository must immediately notify the Authority of any such event. Upon completion of any such investigation, the Trading Venue shall immediately provide the Authority with a copy of the report containing, where applicable, a statement of any recommendation made and the measures taken to resolve the complaint.
- R2-8.3 The Trading Venue or Central Securities Depository shall keep a log of all of its breaches of the Act, the Regulations arising therefrom, Financial Market Rules issued thereunder or EU legislation. The Trading Venue or Central Securities Depository shall notify the Authority of all such breaches as soon as the Trading Venue or Central Securities Depository becomes aware of the breach.
- R2-8.4 The complaints register and the breaches log shall contain the following information:
- a. Date of complaint or breach;
 - b. Short description of the complaint or breach; and
 - c. The date and manner in which the complaint or breach was addressed or resolved.

Section 9: Dissolution and Insolvency Events

- R2-9.1 A Trading Venue or Central Securities Depository shall, on the day of occurrence of any of the events mentioned below, give notice to the Authority, together with any supplementary information that may be required by the Authority in this regard:
- a. the dissolution of the Trading Venue or Central Securities Depository (or the commencement of any similar or equivalent proceedings under the laws of any foreign jurisdiction); or
 - b. the appointment of an Official Receiver, provisional administrator or liquidator in relation to a Trading Venue or Central Securities Depository (or any similar or equivalent appointment under the laws of any foreign jurisdiction), where relevant; or
 - c. a Trading Venue or Central Securities Depository reaching a compromise with its creditors (or any similar or equivalent procedure under the laws of any foreign jurisdiction).

Section 10: Legal Action

- R2-10.1 If any legal action is instituted against a Trading Venue or Central Securities Depository, such Trading Venue or Central Securities Depository shall, subject to Rule R2-9.2 below, immediately provide the Authority with the:
- a. name of the claimant;
 - b. particulars of the claim;
 - c. amount of damages and any other remedy sought by the claimant;
and
 - d. particulars of any allegation that any act or omission of the Trading Venue or Central Securities Depository was in bad faith.
- R2-10.2 A Trading Venue or Central Securities Depository is not required to comply with the provisions of Rule R2-9.1 above, where the action relates to a money claim for a sum of € 5,000 or less, and where:
- a. the action would not have a significant adverse effect on the reputation and standing of the Trading Venue or Central Securities Depository, if such action were to be successful; or
 - b. such action does not relate to the oversight by the Trading Venue or Central Securities Depository of compliance by subject persons with the rules or bye-laws issued by the Trading Venue.

Section 11: Suspension of Services and Inability to Operate Facilities

- R2-11.1 Where, due to the occurrence of any event or circumstances, a Trading Venue or Central Securities Depository extends its hours of operation, it must, on the day of such extension, give the Authority notice of that event, specifying:
- a. the event or circumstance causing it to extend its hours of operation;
 - b. the new hours of operation; and
 - c. the date on which it expects to revert to its normal hours of operation, if at all.

Section 12: Business Recovery Procedures

- R2-12.1 Where a Trading Venue or Central Securities Depository changes any of its business recovery procedures relating to a failure of its operations including any of its IT systems, it must immediately give notice to the Authority of that event, together with a copy of the revised recovery procedures.
- R2-12.2 Where any back-up IT system of a Trading Venue or Central Securities Depository fails in such a way that, if the main IT system of that Trading Venue or Central Securities Depository were also to fail, it would be unable to operate any of its facilities during its normal hours of operation, that Trading Venue or Central Securities Depository must, on the occurrence of such event, give notice to the Authority of that event and inform the Authority of:
- a. what action is being taken by the Trading Venue or Central Securities Depository to restore the operation of the back-up information technology system; and
 - b. when is the operation of back-up information system expected to be restored.

Section 13: Inability to Discharge Functions

- R2-13.1 Where, due to the occurrence of any event or circumstances, a Trading Venue or Central Securities Depository is unable to discharge any of its functions whatsoever, it must on the day of such occurrence give the Authority notice of its inability to discharge that function, specifying:
- a. the event or circumstance causing it to become unable to discharge any of its functions;
 - b. the functions which the Trading Venue or Central Securities Depository is unable to discharge; and
 - c. what action, if any, is being taken or is being proposed by the Trading Venue or Central Securities Depository in order to deal with the situation and, in particular, to be able to recommence discharging that function.

Section 14: Disciplinary Actions

- R2-14.1 Where a Trading Venue has taken any disciplinary action against any member, including the suspension of the member from trading or expelling a person from membership, or any other disciplinary action against an employee of a member, in respect of a breach of its directives or bye-laws,

that Trading Venue must immediately notify the Authority of that event, providing:

- a. the name of the person concerned;
- b. a brief description of the breach;
- c. details of the disciplinary action taken by the Trading Venue; and
- d. **the Trading Venue's reasons for taking that disciplinary action.**

Section 15: Relations with Auditors

R2-15.1 Any person authorised within the meaning of Directive 2006/43/EC of the European Parliament and of the Council, performing in a regulated market or a DRSP, the task described in Article 34 of Directive 2013/34/EU or Article 73 of Directive 2009/65/EC or any other task prescribed by law, shall have a duty to report promptly to the Authority any fact or decision concerning that undertaking of which that person has become aware while carrying out that task and which is liable to:

- a. constitute a material infringement of the laws, regulations or administrative provisions which lay down the conditions governing authorisation;
- b. lead to refusal to certify the accounts or to the expression of reservations.

R2-15.2 That person shall also have a duty to report any facts and decisions of which the person becomes aware in the course of carrying out one of the tasks referred to in R2-14.1 in an undertaking having close links with the regulated market within which he is carrying out that task.

R2-15.3 The disclosure in good faith to the Authority, by persons authorised within the meaning of Directive 2006/43/EC, of any fact or decision referred to in R2-14.1 shall not constitute a breach of any contractual or legal restriction on disclosure of information and shall not involve such persons in liability of any kind.

Section 16: Appeal Structures

R2-16.1 Trading venues may allow parties who feel aggrieved by certain decisions taken by the trading venue to appeal such decisions to a tribunal which is specifically set up to hear such appeals.

- R2-16.2 Where the trading venue decides to set up a tribunal in accordance with R2-16.1, the trading venue shall submit the nomination of arbitrators and their selection to hear and determine any request of appeal, as proposed by the trading venue, for the approval of the Competent Authority. The Competent Authority shall have complete discretion to approve or otherwise the nomination and selection of arbitrators proposed by the trading venue.
- R2-16.3 Arbitrators shall at all times be accountable to the Competent Authority to uphold on a continuing basis the interests and well-being of investors and the capital markets and to adhere on a continuing basis to the highest criteria of integrity, professional care and due diligence in their respective domains.
- R2-16.4 The Competent Authority may: **(a) suspend an arbitrator's accreditation for a definite period of time, which can be renewed from time to time, in the event of any reasonable suspicion of an arbitrator's possible ineligibility to serve as Arbitrator; or (b) terminate an Arbitrator's accreditation in the event of any final and definitive finding about such arbitrator's ineligibility. Suspension of accreditation may be terminated and an Arbitrator's accreditation may be restored if the Competent Authority finds that the possibility of ineligibility and/or lack of accountability have been resolved to its satisfaction.**
- R2-16.5 Arbitrators shall be bound to promptly notify the Competent Authority of any possible conflict of interest in any particular appeal request submitted to the tribunal for hearing and final determination, at the earliest possible opportunity.
- A member notifying a possible conflict of interest shall be substituted by another member. Upon receipt of notice of such possible conflict of interest, the Competent Authority shall promptly advise both parties (the appellant and the trading venue), together with a notice of selection of the substitute Arbitrator.
- R2-16.6 Parties to an appeal shall have the right to veto one or more members of the tribunal as approved by the Competent Authority, on the basis of proven conflicts of interest brought forward in writing by the vetoing party/-ies. The right to veto by any of the parties is only reserved up to three times per appeal request.
- R2-16.7 Tribunals shall independently regulate their own expedited procedures in hearing and determining an appeal whilst ensuring a fair hearing to all parties to the proceedings.
- R2-16.8 Trading venues shall notify arbitrators of their obligations under these Rules.

Part III: Capital Requirements

Section 1: Capital Requirements for CSDs

R3-1.1 The CSD is required to have capital, together with its retained earnings and reserves, proportional to the risks stemming from the activities it undertakes. The capital is required to be sufficient to ensure that:

- a. The CSD is adequately protected against operational, legal, custody, investment and business risks so that it can continue operating as a going concern entity; and
- b. The CSD can wind down or restructure its activities over an appropriate time span of at least 6 months under a range of stress scenarios

R3-1.2 In order for the Authority to assess whether a CSD fulfils the capital requirements emanating from the CSDR, such CSD is required to fill and submit the schedule which will be made available by the Authority upon request, on a quarterly basis as follows:

Reporting Reference Date	Remittance Date
31 st March	28 th April
30 th June	29 th July

30 th September	28 th October
31 st December	28 th January

- R3-1.3 Without prejudice to Rule R3-1.2, the Authority may require a CSD to submit the schedule referred to in Financial Market Rule R3-1.2 on a more regular basis, in cases of exceptional circumstances.
- R3-1.4 The CSD is required to maintain a plan for:
- a. Raising additional capital should its equity capital approach or fall below the requirements laid down in Rule R3-1.1 above; and
 - b. The orderly winding-down or restructuring of its operations and services where the CSD is unable to raise new capital.
- R3-1.5 A CSD shall, on an annual basis by the last day of February, submit to the Authority the plan mentioned in Rule R3-1.4 above. Notwithstanding the aforesaid, in the event where a CSD amends the plan during the year, such CSD should immediately notify the Authority once the amendment is approved by the management body of the CSD and provide the Authority with an updated copy thereof.

Section 2: Capital Requirements for Trading Venues

- R3-2.1 Without prejudice to the initial capital requirements contained in the Investment Services Rules for Investment Services Providers, or unless otherwise established under EU legislation, the Minimum Initial Capital for a **Trading Venue shall be €730,000.**
- R3-2.2 A Trading Venue shall at all times maintain own funds equal to or in excess of the capital requirements stipulated in Rule R3-2.1 above.
- R3-2.3 The capital requirements applicable to a Trading Venue, as well as the methodology for calculating whether a Trading Venue satisfies such capital requirements, are set out in a separate schedule - Financial Market Rules stipulating Financial Resources and Financial Reporting Requirements applicable to Regulated Markets – which will be made available by the Authority upon request.
- R3-2.4 A Trading Venue is required to submit the schedule mentioned in Rule R3-2.3 on a semi-annual basis as stipulated below:

Reporting Reference Date	Remittance Date
30 th June	28 th July
31 st December	28 th January

R3-2.5 A Trading Venue shall comply with any further capital requirements as may be set by the Authority from time to time.

R3-2.6 A Trading Venue shall immediately notify the Authority if it is at any time in breach of the capital requirements. In this case, the MFSA may, at its discretion, allow the Trading Venue a limited period within which to restore the capital requirements to the required level.

Section 3: Capital Requirements Waiver

R3-3.1 The Authority may, at its discretion and upon application being made by a Trading Venue, waive the capital requirements applicable for Trading Venues in terms of Section 2 of Part 3, in the event where a Trading Venue forms part of the same setup of a CSD, and would consequently be considered as **forming part of a CSD's ancillary activities**.

Part IV: Trading Venues and Data Reporting Services Providers

Section 1: Transparency Requirements

R4-1.1 Trading venues shall make reference to and comply with the following:

- i. [Commission Delegated Regulation \(EU\) 2017/587](#) of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser.
- ii. [Commission Delegated Regulation \(EU\) 2017/583](#) of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives.

- iii. [Commission Delegated Regulation \(EU\) 2017/577](#) of 13 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on the volume cap mechanism and the provision of information for the purposes of transparency and other calculations.
- iv. [Commission Delegated Regulation \(EU\) 2016/2020](#) of 26 May 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on criteria for determining whether derivatives subject to the clearing obligation should be subject to the trading obligation.
- v. [Commission Delegated Regulation \(EU\) 2017/579](#) of 13 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on the direct, substantial and foreseeable effect of derivative contracts within the Union and the prevention of the evasion of rules and obligations.

Section 2: Market Microstructure

R4-2.1 Trading Venues shall make reference to and comply with the following:

- i. [Commission Delegated Regulation \(EU\) 2017/584](#) of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying organizational requirements of trading venues.
- ii. [Commission Delegated Regulation \(EU\) 2017/578](#) of 13 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards specifying the requirements on market making agreements and schemes
- iii. [Commission Delegated Regulation \(EU\) 2017/566](#) of 18 May 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards for the ratio of unexecuted orders to transactions in order to prevent disorderly trading conditions.
- iv. [Commission Delegated Regulation \(EU\) 2017/573](#) of 6 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on requirements to ensure fair and non-discriminatory co-location services and fee structures.

- v. [Commission Delegated Regulation \(EU\) 2017/588](#) of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the tick size regime for shares, depositary receipts and exchange-traded funds.
- R4-2.2 Trading Venues and DRSPs shall make reference to and comply with the Guidelines issued by ESMA entitled "***Guidelines on the management body of market operators and data reporting services providers***". A copy of these Guidelines, as may be amended from time to time, is made available by ESMA and is accessible from the ESMA website.
- R4-2.3 On an annual basis and by not later than 15 February, Trading Venues shall submit to the Authority, a calculation of the average daily number of transactions for shares and depositary receipts and determine the most relevant market in terms of liquidity for that share or depositary receipt. Such calculation shall be made in accordance with Article 3(2) of Commission Delegated Regulation (EU) 2017/588. The result of the above calculations shall be submitted to the Authority electronically in the format prescribed in the schedule which will be made available by the Authority upon request. Such submission shall be made where the competent authority of the most relevant market in terms of liquidity as specified in Article 16 of Commission Delegated Regulation (EU) 2017/590, is the Malta Financial Services Authority.
- R4-2.4 The requirements contained in R4-2.3 above shall not apply to shares and depositary receipts which were first admitted to trading or were first traded on a Trading Venue four weeks or less before the end of the preceding calendar year.
- R4-2.5 Before the first admission to trading or before the first day of trading of a share or depositary receipt, the Trading Venue shall estimate the average daily number of transactions for that financial instrument, taking into account the previous trading history of that financial instrument, where applicable, as well as the previous trading history of financial instruments that are considered to have similar characteristics, and submit such estimates to the Authority. The result of the above estimates shall be submitted to the Authority electronically in the format prescribed in the schedule which will be made available by the Authority upon request.
- R4-2.6 No later than six weeks after the first day of trading of a share or depositary receipt, the Trading Venue shall calculate and submit to the Authority, the average daily number of transactions in that financial instrument for that trading venue, using the data relating to the first four weeks of trading of that financial instrument. The result of the above calculations shall be submitted

to the Authority electronically in the format prescribed in the schedule which will be made available by the Authority upon request.

- R4-2.7 The average daily number of transactions for a financial instrument shall be calculated by dividing, for the relevant time period and the relevant Trading Venue, the total number of transactions in that financial instrument by the number of trading days.
- R4-2.8 Trading Venues and DRSPs shall make reference to and comply with the **Guidelines issued by ESMA entitled “[Final Guidelines On the MiFID II/ MiFIR obligations on market data](#)”**. A copy of these Guidelines, as may be amended from time to time, is made available by ESMA and is accessible from the ESMA website.

Section 3: Trading Halts

- R4-3.1 Trading Venues shall make reference to and comply with [Commission Delegated Regulation \(EU\) 2017/570](#) of 26 May 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards for the determination of a material market in terms of liquidity in relation to notifications of a temporary halt in trading.
- R4-3.2 Trading Venues shall make reference to and comply with the Guidelines issued by ESMA entitled “*Guidelines on the calibration of circuit breakers and publication of trading halts under MiFID II*”. A copy of these Guidelines, as may be amended from time to time, is made available by ESMA and is accessible from the ESMA website.

Section 4: Data Publication

- R4-4.1 Trading venues shall make reference to and comply with the following:
- i. [Commission Delegated Regulation \(EU\) 2017/581](#) of 24 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on clearing access in respect of trading venues and central counterparties;
 - ii. [Commission Delegated Regulation \(EU\) 2017/571](#) of 2 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the authorisation, organisational requirements and the publication of transactions for data reporting services providers;

- iii. [Commission Delegated Regulation \(EU\) 2017/572](#) of 2 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on the specification of the offering of pre-and post-trade data and the level of disaggregation of data; and
- iv. [Commission Delegated Regulation \(EU\) 2016/2021](#) of 2 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on access in respect of benchmarks.

R4-4.2 For financial instruments subject to the trading obligation in Articles 23 and 28 of MiFIR and for other financial instruments, each trading venue shall make available to the public, without any charges, data relating to the quality of execution of transactions on that venue on at least an annual basis. Periodic reports shall include details about price, costs, speed and likelihood of execution for individual financial instruments.

Section 5: Trading

R4-5.1 Regulated markets shall make reference and comply with [Commission Delegated Regulation \(EU\) 2017/568](#) of 24 May 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the admission of financial instruments to trading on regulated markets.

R4-5.2 Trading Venues shall make reference and comply with [Commission Delegated Regulation \(EU\) 2017/569](#) of 24 May 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the suspension and removal of financial instruments from trading.

R4-5.3 MTFs and OTFs shall make reference and comply with [Commission Implementing Regulation \(EU\) 2016/824](#) of 25 May 2016 laying down implementing technical standards with regard to the content and format of the description of the functioning of multilateral trading facilities and organized trading facilities and the notification to the European Securities and Markets Authority according to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments.

R4-5.4 Operators of Trading venues shall establish and maintain transparent rules based on objective criteria, governing access to their facilities. These rules shall *inter alia* provide that the RMs and the MTFs may admit as members or participants or that the OTF may admit as users, License Holders, credit institutions authorised under Directive 2000/12/EC and other person who:

- i. Are fit and proper;
- ii. Have a sufficient level of trading ability and competence;
- iii. Have, where applicable, adequate organisational arrangements; and
- iv. Have sufficient resources for the role they are to perform, taking into account the different financial arrangements that the TVs may have established in order to guarantee the adequate settlement of transactions.

Section 6: Market Data Reporting

R4-6.1 Trading Venues shall synchronise the business clocks they use to record the date and time of any reportable event.

R4-6.2 Trading Venues shall make reference to and comply with the following:

- i. [Commission Delegated Regulation \(EU\) 2017/590](#) of 28 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities.
- ii. [Commission Delegated Regulation \(EU\) 2017/580](#) of 24 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the maintenance of relevant data relating to orders in financial instruments.

[Commission Delegated Regulation \(EU\) 2017/574](#) of 7 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy of business clocks.

R4-6.3 Where relevant a trading venue shall comply with the guidelines issued by **ESMA entitled 'Guidelines on Transaction reporting, order record keeping and clock synchronization under MiFID II'**. A copy of these Guidelines, as may be amended from time to time, is made available by ESMA and is accessible from the ESMA website.

Section 7: Post-Trading

- R4-7.1 Trading Venues shall make reference to and comply with [Commission Delegated Regulation \(EU\) 2017/582](#) of 29 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards specifying the obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing.

Section 8: Administrative Sanctions

- R4-8.1 A Trading Venue shall at all times observe the all the relative requirements which emanate from the Act and rules and regulations issued thereunder as well as the requirements which emanate from MiFIR.
- R4-8.2 Administrative penalties, measures and investigatory powers which the MFSA may apply, are stipulated in the Financial Markets Act (MiFID and MiFIR Administrative Penalties, Measures and Investigatory Powers) Regulations.
- R4-8.3 The MFSA shall impose administrative penalties and other administrative measures which are effective, proportionate and dissuasive, in respect of breaches of:
- a. the provisions of the Financial Markets Act and, or of regulations and, or Financial Market Rules issued thereunder transposing the provisions of MiFID;
- the provisions of MiFIR.
- b.
- R4-8.4 In determining whether to impose an administrative penalty or other measure, and in determining the appropriate penalty or sanction, the MFSA shall be guided by the principle of proportionality. The MFSA shall, where relevant, take into consideration the circumstances of the specific case, which may inter alia include:
- i. the repetition, frequency, gravity or duration of the infringement by the Trading Venue;
 - ii. the degree of responsibility of the natural or legal person responsible for the infringement;
 - iii. the financial strength of the Trading Venue;
 - iv. the profits gained or losses avoided by the Trading Venue by reason of the infringement, insofar as they can be determined;

- v. the losses for third parties caused by the infringement, insofar as they can be determined;
- vi. the level of cooperation of the Trading Venue with the Authority;
- vii. previous infringements by the Trading Venue and prior sanctions imposed by MFSA or other regulatory authorities on the same Trading Venue;
- viii. the good faith, the degree of openness and diligence of the Trading Venue in the fulfilment of his obligations under the Act, relative rules and regulations, or of decisions of the competent authority in this regard;
- ix. any evidence of wilful deceit on the part of the Trading Venue or its officers; and
- x. any potential systemic consequences of the infringement.

- R4-8.5 Whenever the infringement consists of a failure to perform a duty, the application of a sanction shall not exempt the Trading Venue from its performance, unless the decision of the MFSA explicitly states the contrary.
- R4-8.6 These Financial Market Rules stipulate various requirements for the submission of documents within set time-frames. In the instance when such time-frames are not complied with, and unless there are justifiable reasons for the delay, Trading Venues will be considered as breaching the relevant Rule(s) and will be penalised accordingly.
- R4-8.7 The MFSA will use its discretion to decide what action to take in respect of Trading Venues which do not submit documents by their due date, after taking into consideration the reasons (if any) put forward by the Trading Venue for the delay.
- R4-8.8 Late submission gives rise to liability to an initial penalty and an additional daily penalty. If the conditions imposed by MFSA are not met, the Authority reserves the right to take any further action it may deem adequate in the circumstances.
- R4-8.9 A right of appeal to the Financial Services Tribunal is available to Trading Venues on whom penalties are imposed.

Section 9: Deferred Publication

- R4-9.1 The MFSA may authorize market operators and investment firms operating a Trading Venue to provide for deferred publication of the details of transactions based on the size or type of the transaction.

In particular, the MFSA may authorize the deferred publication in respect of transactions that:

- a. are large in scale compared with the normal market size for that bond, structured finance product, emission allowance or derivative traded on a Trading Venue, or for that class of bond, structured finance product, emission allowance or derivative traded on a trading venue; or
- b. are related to a bond, structured finance product, emission allowance or derivative traded on a Trading Venue, or a class of bond, structured finance product, emission allowance or derivative traded on a Trading Venue for which there is not a liquid market;
- c. are above a size specific to that bond, structured finance product, emission allowance or derivative traded on a Trading Venue, or that class of bond, structured finance product, emission allowance or derivative traded on a Trading Venue, which would expose liquidity providers to undue risk and takes into account whether the relevant market participants are retail or wholesale investors.

Market operators and investment firms operating a Trading Venue shall **obtain the MFSA's prior approval of proposed arrangements for deferred trade-publication**, and shall clearly disclose those arrangements to market participants and the public.

ESMA shall monitor the application of those arrangements for deferred trade-publication and shall submit an annual report to the Commission on how they are used in practice.

R4-9.2

The MFSA may, in conjunction with an authorization of deferred publication:

- a. request the publication of limited details of a transaction or details of several transactions in an aggregated form, or a combination thereof, during the time period of deferral;
- b. allow the omission of the publication of the volume of an individual transaction during an extended time period of deferral;
- c. regarding non-equity instruments that are not sovereign debt, allow the publication of several transactions in an aggregated form during an extended time period of deferral;
- d. regarding sovereign debt instruments, allow the publication of several transactions in an aggregated form for an indefinite period of time.

In relation to sovereign debt instruments, points (b) and (d) may be used either separately or consecutively whereby once the volume omission extended period lapses, the volumes could then be published in aggregated form.

In relation to all other financial instruments, when the deferral time period lapses, the outstanding details of the transaction and all the details of the transactions on an individual basis shall be published.

R4-9.3

Where the MFSA authorises the deferred publication of the details of transactions pursuant to Rules R4-9.1 and R4-9.2 above, investment firms trading outside a Trading Venue and market operators and investment firms operating a Trading Venue shall make public each transaction no later than 19:00 local time on the second working day after the date of the transaction, provided one of the following conditions is satisfied:

- a. the transaction is in a financial instrument or a class of financial instruments for which there is not a liquid market as specified in accordance with the methodology set out in Article 13 of [Commission Delegated Regulation \(EU\) 2017/583](#);
- b. the transaction is executed between an investment firm dealing on own account other than on a matched principal basis as per Article 4(1)(38) of MiFID II and another counterparty and is above a size specific to the instrument as specified in Article 10 of [Commission Delegated Regulation \(EU\) 2017/583](#);
- c. the transaction is a package transaction which meets one of the following criteria:
 - i. one or more of its components are transactions in financial instruments which do not have a liquid market;
 - ii. one or more of its components are transactions in financial instruments that are large in scale compared with the normal market size as determined by Article 9 of [Commission Delegated Regulation \(EU\) 2017/583](#);
 - iii. the transaction is executed between an investment firm dealing on own account other than on a matched principal basis as per Article 4(1)(38) of MiFID II and another counterparty, and one or more of its components are transactions in financial instruments that are above the size specific to the instrument as determined by Article 10 of [Commission Delegated Regulation \(EU\) 2017/583](#).

R4-9.4

When the time limit of deferral set out in Rule R4-9.3 above has lapsed, all the details of the transaction shall be published unless an extended or an indefinite time period of deferral is granted in accordance with Article 11 of [Commission Delegated Regulation \(EU\) 2017/583](#).

Part V: CSDs

Section 1: CSD Requirements

- R5-1.1 In addition to the CSDR, CSDs shall make reference to [Commission Delegated Regulation \(EU\) 2017/392](#) of 11 November 2016 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 with regard to regulatory technical standards on authorisation, supervisory and operational requirements for central securities depositories.
- R5-1.2 Further to Rule R5-1.1 above, CSDs shall also make reference to [Commission Implementing Regulation \(EU\) 2017/394](#) of 11 November 2016 laying down implementing technical standards with regard to standard forms, templates and procedures for authorization, review and evaluation of central securities depositories, for the cooperation between authorities of the home Member State and the host Member State, for the consultation of authorities involved in the authorization to provide banking-type ancillary services, for access involving central securities depositories, and with regard to the format of the records to be maintained by central securities depositories in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council.

Section 2: Internalised Settlement

- R5-2.1 In addition to the CSDR, CSDs shall make reference to Commission Delegated Regulation (EU) 2017/389 of 11 November 2016 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council as regards the parameters for the calculation of cash penalties for settlement fails and the operations of CSDs in host Member States.
- R5-2.2 Further to Rule R5-2.1 above, CSDs shall also make reference to [Commission Implementing Regulation \(EU\) 2017/393](#) of 11 November 2016 laying down implementing technical standards with regard to the templates and procedures for the reporting and transmission of information on internalized settlements in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council.

Section 3: Access by a CSD to the Transaction Feeds of CCPs and Trading Venues

- R5-3.1 A trading venue or a CCP shall take into consideration the risks outlined in Rule R5-3.2 below when carrying out a comprehensive risk assessment following a request for access to the transaction feed of the CCP or of the trading venue.

R5-3.2

Where a CCP or a trading venue carries out a comprehensive risk assessment following a request for access by a CSD, and when the Authority assesses the reasons for refusal to provide services by the CCP or by the trading venue, a CCP or a trading venue shall take into account the following risks resulting from such a provision of services:

a. Legal risks

When assessing legal risks following a request for access to trading feeds by a CSD, a CCP or a trading venue shall take into account at least the following criteria:

- i. A CSD does not provide the information needed to assess its compliance with the rules and legal requirements for access of the receiving party, including the legal opinions or any relevant legal arrangements that demonstrate the ability of a CSD to meet its obligations towards the receiving party; and
- ii. A CSD does not provide the information, including legal opinions or any relevant legal arrangements, needed to assess its ability to ensure, in accordance with the rules applicable in the Member State of the receiving party, the confidentiality of information provided through the transaction feed; and
- iii. Where a CSD is established in a third country, either the following: (1) a CSD is not subject to a regulatory and supervisory framework comparable to the regulatory and supervisory framework that would be applicable to a CSD if it were established in the Union, and (2) the rules of a CSD concerning settlement finality are not comparable to those referred to Article 39 of Regulation (EU) No 909/2014.

b. Financial risks

When assessing financial risks following a request for access to trading feed by a CSD, a CCP or a trading venue shall take into account at least the following criteria:

- i. A CSD does not hold sufficient financial resources to fulfil its contractual obligations towards the receiving party; and
- ii. A CSD is not willing to or able to finance any customized component required to enable access in accordance with Article 51(1) of Regulation (EU) No 909/2014, to the extent that this is not a discriminatory access condition.

c. Operational risks

When assessing operational risks following a request for access by a CSD, a CCP or a trading venue shall take into account at least the following criteria:

- i. A CSD does not have the operational capacity to settle the securities transactions executed on the trading venue;
- ii. A CSD is not able to demonstrate that it can adhere to and comply with the existing risk management rules of the receiving party or it lacks the necessary expertise in that regard;
- iii. A CSD has not put in place business continuity policies and a disaster recovery plan; and
- iv. The granting of access requires the receiving party to undertake significant changes of its operations that would affect the risk management procedures and would endanger the smooth functioning of the trading venue, such as the implementation of ongoing manual processing by such parties.

R5-3.3 Where relevant a Central Securities Depository shall comply with the guidelines issued by ESMA entitled '*Guidelines on access by a CSD to the transaction feeds of a CCP or of a trading venue*'. A copy of these Guidelines, as may be amended from time to time, is made available by ESMA and is accessible from the ESMA website.

Section 4: CSD Participants and Settlement Internalisers

R5-4.1 Where relevant a CSD shall comply with the guidelines issued by ESMA entitled '*Guidelines on participant default rules and procedures under Regulation (EU) No 909/2014*'. A copy of these Guidelines, as may be amended from time to time, is made available by ESMA and is accessible from the ESMA website.

R5-4.2 Any institution acting as a settlement internaliser as defined by Article 2(1)(11) of Regulation (EU) No 909/2014, shall comply with the guidelines issued by ESMA entitled '*Guidelines on Internals settlement Reporting under Article 9 of CSDR*'. A copy of these Guidelines, as may be amended from time to time, is made available by ESMA and is accessible from the ESMA website.

Section 5: Settlement Discipline

R5-5.1 In addition to the CSDR, investment firms as authorised pursuant to Article 5 of Directive 2014/65/EU, shall make reference and comply with the requirements contained in Article 2 of Commission Delegated Regulation (EU) 2018/1229 supplementing Article 6 of Regulation (EU) No 909/2014 of

the European Parliament and of the Council as regards the measures to prevent settlement fails.

- R5-5.2 Pursuant to Rule R5-5.1 above, any institution acting as an Investment Firm shall comply with the guidelines issued by ESMA entitled '*Guidelines on standardised procedures and messaging protocols under Article 6(2) of Regulation (EU) No 909/2014*'. **A copy of these Guidelines, as may be amended** from time to time, is made available by ESMA and is accessible from the ESMA website.

Section 6: CSDs and Cooperation Between Authorities

- R5-6.1 Where relevant a CSD shall comply with the Guidelines issued by ESMA entitled '*Guidelines on Cooperation between authorities under Articles 17 and 23 of Regulation (EU) No 909/2014*'. **A copy of these Guidelines, as may be amended** from time to time, is made available by ESMA and is accessible from the ESMA website.

Section 7: Process for the Calculation of Relevant Indicators

- R5-7.1 Where relevant a CSD shall comply with the Guidelines issued by ESMA **entitled** '*Guidelines on the Process for the Calculation of the Indicators to Determine the Substantial Importance of a CSD for a Host Member State*'. A copy of these Guidelines, as may be amended from time to time, is made available by ESMA and is accessible from the ESMA website.
- R5-7.2 Where relevant a CSD shall comply with the Guidelines issued by ESMA **entitled**, '*Guidelines on the Process for the Calculation of the Indicators to Determine the Most Relevant Currencies in which Settlement Takes Place*'. A copy of these Guidelines, as may be amended from time to time, is made available by ESMA and is accessible from the ESMA website.

Section 8: Administrative Sanctions

- R5-8.1 A CSD shall at all times observe the Financial Market Rules which are applicable to it, as well as all the relative requirements which emanate from the Act and regulations issued thereunder as well as the requirements which emanate from the CSDR.
- R5-8.2 Administrative penalties, measures and investigatory powers which the MFSA may apply, in the context of the CSDR, are stipulated in the Financial Markets Act (CSDR Administrative Penalties, Measures and Investigatory Powers) Regulations.

- R5-8.3 The Authority shall impose administrative sanctions for the following infringements:
- a. provision of services set out in Sections A, B and C of the Annex of the CSDR in infringement of Articles 16, 25 and 54 of the CSDR;
 - b. obtaining the authorizations required under Articles 16 and 54 of the CSDR by making false statements or by any other unlawful means as provided for in point (b) of Article 20(1) and point (b) of Article 57(1) of the CSDR;
 - c. failure of CSDs to hold the required capital as contained in Part III of these Financial Market Rules, thus infringing Article 47(1) of the CSDR;
 - d. failure of CSDs to comply with the organizational requirements, thus infringing Articles 26 to 30 of the CSDR;
 - e. failure of CSDs to comply with the conduct of business rules, thus infringing Articles 32 to 35 of the CSDR;
 - f. failure of CSDs to comply with the requirements for CSD services, thus infringing Articles 37 to 41 of the CSDR;
 - g. failure of CSDs to comply with the prudential requirements, thus infringing Articles 43 to 47 of the CSDR;
 - h. failure of CSDs to comply with the requirements for CSD links, thus infringing Article 48 of the CSDR
 - i. abusive refusals by CSDs to grant different types of access, thus infringing Articles 49 to 53 of the CSDR;
 - j. failure of designated credit institutions to comply with the specific prudential requirements related to credit risks, thus infringing Article 59(3) of the CSDR;
 - k. failure of designated credit institutions to comply with specific prudential requirements related to liquidity risks, thus infringing Article 59(4) of the CSDR;
 - l. failure by a CSD to comply with Part IV of the Act or with any of the provisions contained in these Financial Market Rules.
- R5-8.4 When determining the type and level of administrative sanctions or other measures, the Authority shall take into account all relevant circumstances, including, where appropriate:

- a. the gravity and the duration of the infringement;
- b. the degree of responsibility of the person responsible for the infringement;
- c. the financial strength of the person responsible for the infringement, for example as indicated by the total turnover of the responsible legal person or the annual income of the responsible natural person;
- d. the importance of the profits gained, losses avoided by the person responsible for the infringement or the losses for third parties derived from the infringement, insofar as they can be determined;
- e. the level of cooperation of the person responsible for the infringement with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;
- f. previous infringements by the person responsible for the infringement.

R5-8.5 Whenever the infringement consists of a failure to perform a duty, the application of a sanction shall not exempt the CSD from its performance, unless the decision of the MFSA explicitly states the contrary.

R5-8.6 These Financial Market Rules stipulate various requirements for the submission of documents within set time-frames. In the instance when such time-frames are not complied with, and unless there are justifiable reasons for the delay, the CSD will be considered as breaching the relevant Rule(s) and will be penalised accordingly.

R5-8.7 The MFSA will use its discretion to decide what action to take in respect of CSDs who do not submit documents by their due date, after taking into consideration the reasons (if any) put forward by the CSD for the delay.

R5-8.8 Late submission gives rise to liability to an initial penalty and an additional daily penalty. If the conditions imposed by MFSA are not met, the Authority reserves the right to take any further action it may deem adequate in the circumstances.

R5-8.9 A right of appeal to the Financial Services Tribunal is available to CSDs on whom penalties are imposed.

Section 9: Identification of Shareholders, Transmission of Information and Facilitation of Exercise of Shareholders Rights

- R5-9.1 A CSD shall make reference and comply with [Commission Delegated Regulation \(EU\) 2018/1212](#) of 3 September 2018 laying down minimum requirements implementing the provisions of Directive 2007/36/EC of the European Parliament and of the Council as regards shareholder identification, the transmission of information and the facilitation of the exercise of shareholder rights.
- R5-9.2 A CSD is required to observe the requirements under this section of the Financial Market Rules, in so far they provide services to shareholders or other Intermediaries with respect to shares of companies which have their registered office in a Member State and the shares of which are admitted to trading on a regulated market situated or operating within a European Member State.
- R5-9.3 The CSD shall, upon request of the Company or of a third party nominated by the Company, communicate without delay to the Company, the information regarding shareholder identity.
- R5-9.4 Where there is more than one Intermediary in a chain of Intermediaries, the request of the Company or of a third party nominated by the Company, is transmitted between Intermediaries without delay and that information regarding shareholder identity is transmitted directly to the Company or to a third party nominated by the Company without delay by the Intermediary who holds the requested information. The Intermediary in the chain that holds the information shall provide the information regarding shareholder identity to the Company.
- R5-9.5 The CSD shall, upon the request of the Company, collect the information regarding shareholder identity, including from the Intermediaries in the chain of Intermediaries, and transmit the information to the Company.
- The CSD shall, upon the request of the Company or of a third party nominated by the Company, communicate to the Company without delay the details of the next Intermediary in the chain of Intermediaries.
- R5-9.6 Without prejudice to any longer storage period laid down by any sector-specific European legislative act, the CSD shall not store the personal data of shareholders transmitted to them in accordance with these Rules, for longer than 12 months after the CSD has become aware that the person concerned has ceased to be a shareholder.
- R5-9.7 The CSD shall allow legal persons to rectify incomplete or inaccurate information regarding their shareholder identity.

- R5-9.8 Any CSD that discloses information regarding shareholder identity in accordance with these Rules, is not considered to be in breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision.
- R5-9.9 The CSD shall transmit the following information, without delay, from the Company to the shareholder or to a third party nominated by the shareholder:
- a. the information which the Company is required to provide to the shareholder, to enable the shareholder to exercise rights flowing from its shares, and which is directed to all shareholders in shares of that class; or
 - b. where the information referred to in point (a) is available to shareholders on the website of the Company, a notice indicating where on the website that information can be found.
- Provided that, the CSD is not required to provide or transmit the information referred to in points (a) and (b) above, where that information or notice is sent directly by the Company to all shareholders or to a third party nominated by the shareholder.
- R5-9.10 The CSD shall transmit, without delay, to the Company in accordance with the instructions received from the shareholders, the information received from the shareholders related to the exercise of the rights flowing from the shares of those shareholders.
- R5-9.11 Where there is more than one Intermediary in a chain of Intermediaries, information referred to in R5-9.9 and R5-9.10 shall be transmitted between Intermediaries without delay, unless the information can be directly transmitted by the Intermediary to the Company or to the shareholder or to a third party nominated by the shareholder.
- R5-9.12 The CSD shall facilitate the exercise of rights by shareholders, including the right to participate and vote in general meetings, which shall comprise at least one of the following:-
- a. the CSD makes the necessary arrangements for the shareholder or a third party nominated by the shareholder to be able to exercise themselves the rights;
 - b. the CSD exercises the rights flowing from the shares upon the explicit authorisation and instruction of the shareholder and for the **shareholder's benefit**.
- R5-9.13 The CSD shall disclose publicly any applicable charges for services provided for under Section 9 of these Rules, separately for every service offered.

Charges levied on shareholders, companies and other intermediaries shall be non-discriminatory and proportionate in relation to the actual costs incurred for delivering the services. Any differences between the charges levied between domestic and cross-border exercise of rights is permitted only where duly justified and where they reflect the variation of actual costs incurred for delivering the services.

R5-9.14

This Section of these Rules applies to CSDs which have neither their registered office nor head office in the Union, when they provide the services referred to in R5-9.2 for shares of a Company having its registered office in Malta and is traded on a Regulated Market in an EU Member State.

Part VI: CCPs and Clearing Members

Section 1: Applicability

R6-1.1 This Part of these Rules applies to Central Counterparties.

Section 2: Conflict of Interest Management and Anti-Procyclicality Margin Measures

R6-2.1 In addition to the EMIR, CCPs shall *inter alia* make reference to [Commission Delegated Regulation \(EU\) 153/2013](#) of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 with regard to regulatory technical standards on requirements for central counterparties.

R6-2.2 CCPs shall make reference to and comply with the Guidelines issued by ESMA entitled "**Guidelines on CCP conflict of interest management**". A copy of these Guidelines, as may be amended from time to time, is made available by ESMA and is accessible from the ESMA website.

R6-2.3 CCPs shall make reference to and comply with the Guidelines issued by ESMA entitled "**Guidelines on EMIR Anti-Procyclicality Margin Measures for Central Counterparties**". A copy of these Guidelines, as may be amended from time to time, is made available by ESMA and is accessible from the ESMA website.

Section 3: Liquidity Risks arising from Margin Calls

R6-3.1 CCPs and clearing members shall make reference to and comply with the Recommendation issued by the European Systemic Risk Board on Liquidity Risks arising from Margin Calls (ESRB/2020/6), as applicable. (Where Recommendation A, B, C and D and so on (contained in the Recommendation) set a latest deadline for implementation, then that latest deadline for implementation is to be considered as the effective date of each applicable recommendation). A copy of this Recommendation, as may be amended from time to time, is made available by the ESRB and is accessible from the ESRB website.

Section 4: Interoperability Arrangements

- R6-4.1 CCPs shall make reference to and comply with the Guidelines issued by ESMA entitled "**Guidelines and Recommendations for establishing consistent, efficient and effective assessments of interoperability arrangements**". A copy of these Guidelines, as may be amended from time to time, is made available by ESMA and is accessible from the ESMA website.

Section 5: CCP Colleges

- R6-5.1 CCPs shall make reference to and comply with the Guidelines issued by ESMA entitled "**Guidelines on written agreements between members of CCP colleges**". A copy of these Guidelines, as may be amended from time to time, is made available by ESMA and is accessible from the ESMA website.

Section 6: Principles for Financial Market Infrastructures

- R6-6.1 CCPs shall make reference to and comply with the Guidelines issued by ESMA entitled "**Guidelines and Recommendations regarding the implementation of the CPSS-IOSCO Principles for Financial Market Infrastructures in respect of Central Counterparties**". A copy of these Guidelines, as may be amended from time to time, is made available by ESMA and is accessible from the ESMA website.

Part VII: Derivatives

Section 1: Applicability

R7-1.1 This Part of the Rules applies to Entities engaging in derivative trading.

Section 2: Organisational requirements and operating conditions

R7-2.1 In addition to MiFID II, Entities shall *inter alia* make reference to [Commission Delegated Regulation \(EU\) 2017/565](#) ('**Regulation 2017/565**') of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

Section 3: Application of C6 and C7 of Annex 1 of MiFID II

R7-3.1 Entities shall make reference to and comply with the Guidelines issued by ESMA entitled "***Guidelines on the application of C6 and C7 of Annex 1 of MiFID II***" which clarify Article 4(1)(2) of MiFID II which is to be read in conjunction with points (6) and (7) of section C of Annex 1 to MiFID II and Article 7 of Regulation 2017/565. A copy of these Guidelines, as may be amended from time to time, is made available by ESMA and is accessible from the ESMA website.

Part VIII: Benchmarks

Section 1: Applicability

R8-1.1 This Part of these Rules applies to administrators of benchmarks as defined in Article 3(1)(6) of the Benchmarks Regulation and to supervised contributors as defined in Article 3(1)(10) of the Benchmarks Regulation.

Section 2: Non-*significant* benchmarks under the Benchmarks Regulation

R8-2.1 With respect to the provision of non-significant benchmarks and the contribution to non-significant benchmarks, administrators and supervised contributors of benchmarks shall make reference to and comply with the Guidelines issued by ESMA entitled "***Non-significant benchmarks under the Benchmarks Regulation***". A copy of these Guidelines, as may be amended from time to time, is made available by ESMA and is accessible from the ESMA website.

Part IX: Securities Financing Transactions

Section 1: Applicability

R9-1.1 This Part of the Rules applies to entities entering into Securities Financing Transactions.

Section 2: Guidelines in relation to the Reporting requirements

R9-2.1 Entities shall make reference to and comply with the Guidelines issued by ESMA entitled "*Guidelines - Reporting under Articles 4 and 12 SFTR*" which Guidelines are **based on Article 16(1) of ESMA's Regulation**. A copy of these Guidelines, as may be amended from time to time, is made available by ESMA and is accessible from the ESMA website.