

**L.N. \_\_\_\_\_ of 2017**

**INVESTMENT SERVICES ACT**  
**(CAP. 370)**

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

**Algorithmic Trading Regulations, 2017**

IN exercise of the powers conferred by article 12 of the Investment Services Act, and article 49 of the Financial Markets Act, the Minister for Finance, acting on the advice of the Malta Financial Services Authority, has made the following regulations:

Title and scope.                      **1. (1) The title of these regulations is the Algorithmic Trading Regulations, 2017.**

(2) The purpose of these regulations is to implement Article 4(1) paragraphs 24, 39 to 41 and Article 17(1) – (6) of MIFID as herein defined, and they shall be interpreted and applied accordingly.

Definitions.                      **2. (1) In these regulations unless the context otherwise requires:**

Cap. 370 and Cap. 345                      “the Acts” mean the Investment Services Act and the Financial Markets Act;

“algorithmic trading” means trading in financial instruments where a computer algorithm automatically determines individual parameters of orders such as whether to initiate the order, the timing, price or quantity of the order or how to manage the order after its submission, with limited or no human intervention, and does not include any system that is only used for the purpose of routing orders to one or more trading venues or for the processing of orders involving no determination of any trading parameters or for the confirmation of orders or the post-trade processing of executed transactions;

“competent authority” means the Malta Financial Services Authority established by the Malta Financial Services Authority Act;

“direct electronic access” means an arrangement where a member or

participant or client of a trading venue permits a person to use its trading code so the person can electronically transmit orders relating to a financial instrument directly to the trading venue and includes arrangements which involve the use by a person of the infrastructure of the member or participant or client, or any connecting system provided by the member or participant or client, to transmit the orders (direct market access) and arrangements where such an infrastructure is not used by a person (sponsored access);

“high-frequency algorithmic trading technique” means an algorithmic trading technique characterised by:

- (a) infrastructure intended to minimise network and other types of latencies, including at least one of the following facilities for algorithmic order entry: co-location, proximity hosting or high-speed direct electronic access;
- (b) system-determination of order initiation, generation, routing or execution without human intervention for individual trades or orders; and
- (c) high message intraday rates which constitute orders, quotes or cancellations;

“MAR” means Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC, as amended from time to time;

“Maltese investment firm” means a person licensed in terms of the Investment Services Act, whose head office is in Malta and who is entitled to carry on an activity in a Member State or EEA State other than Malta in exercise of a European Right;

“MiFID” 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, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder;

“trading venue” means a regulated market, an MTF or an OTF.

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

Requirements applicable to investment firms engaging in algorithmic trading.

**3.** A Maltese investment firm that engages in algorithmic trading shall have in place:

- (a) effective systems and risk controls suitable to the business it operates to ensure that its trading systems are resilient and have sufficient capacity, are subject to appropriate trading thresholds

and limits and prevent the sending of erroneous orders or the systems otherwise functioning in a way that may create or contribute to a disorderly market;

- (b) effective systems and risk controls to ensure the trading systems cannot be used for any purpose that is contrary to MAR or to the rules of a trading venue to which it is connected;
- (c) effective business continuity arrangements to deal with any failure of its trading systems and shall ensure its systems are fully tested and properly monitored to ensure that they meet the requirements laid down in this regulation.

Notification to the competent authority.

**4.** (1) A Maltese investment firm that engages in algorithmic trading in Malta or in another Member State or EEA State shall notify this to the competent authority and to the European regulatory authority of the trading venue at which the Maltese investment firm engages in algorithmic trading as a member or participant of the trading venue where this is not established in Malta.

(2) Upon receipt of a notification pursuant to subregulation (1), the competent authority may require the Maltese investment firm to provide, on a regular or *ad hoc* basis, a description of the nature of its algorithmic trading strategies, details of the trading parameters or limits to which the system is subject, the key compliance and risk controls that it has in place to ensure the conditions laid down in regulation 3 are satisfied and details of the testing of its systems.

(3) The competent authority may, at any time, request further information from the Maltese investment firm about its algorithmic trading and the systems used for that trading.

(4) The competent authority shall, on the request of a European regulatory authority of the trading venue at which the Maltese investment firm as a member or participant of the trading venue is engaged in algorithmic trading and without undue delay, communicate the information referred to in subregulations (2) and (3) that it receives from the Maltese investment firm that engages in algorithmic trading.

(5) The Maltese investment firm shall arrange for records to be kept in relation to the matters referred to in this regulation and shall ensure that those records be sufficient to enable the competent authority to monitor compliance with the requirements of MiFID.

(6) A Maltese investment firm that engages in a high-frequency algorithmic trading technique shall store in an approved form accurate and time sequenced records of all its placed orders, including cancellations of orders, executed orders and quotations on trading venues and shall make them available to the competent authority upon request.

Investment firms engaging in algorithmic

**5.** A Maltese investment firm that engages in algorithmic trading to pursue a market making strategy shall, taking into account the liquidity, scale

trading to pursue a market making strategy.

and nature of the specific market and the characteristics of the instrument traded:

- (a) carry out this market making continuously during a specified proportion of the trading venue's trading hours, except under exceptional circumstances, with the result of providing liquidity on a regular and predictable basis to the trading venue;
- (b) enter into a binding written agreement with the trading venue which shall at least specify the obligations of the Maltese investment firm in accordance with paragraph (a) of this regulation; and
- (c) have in place effective systems and controls to ensure that it fulfils its obligations under the written agreement referred to in paragraph (b) at all times.

Pursuit of a market making strategy.

**6.** For the purposes of these regulations and of article 4E of the Financial Markets Act, a Maltese investment firm that engages in algorithmic trading shall be considered to be pursuing a market making strategy when, as a member or participant of one or more trading venues, its strategy, when dealing on own account, involves posting firm, simultaneous two-way quotes of comparable size and at competitive prices relating to one or more financial instruments on a single trading venue or across different trading venues, with the result of providing liquidity on a regular and frequent basis to the overall market.

Investment firms providing direct electronic access to a trading venue.

**7.** (1) A Maltese investment firm that provides direct electronic access to a trading venue shall:

- (a) have in place effective systems and controls which ensure a proper assessment and review of the suitability of clients using the service, that clients using the service are prevented from exceeding appropriate pre-set trading and credit thresholds, that trading by clients using the service is properly monitored and that appropriate risk controls prevent trading that may create risks to the Maltese investment firm itself or that could create or contribute to a disorderly market or could be contrary to MAR or the rules of the trading venue:

Provided that direct electronic access to a trading venue without such controls is prohibited.

- (b) be responsible for ensuring that clients using that service comply with the requirements of MiFID and the rules of the trading venue;
- (c) monitor the transactions in order to identify infringements of those rules, disorderly trading conditions or conduct that may involve market abuse and that is to be reported to the competent

authority;

- (d) ensure that there is a binding written agreement between the Maltese investment firm and the client regarding the essential rights and obligations arising from the provision of the service and that under the agreement the Maltese investment firm retains responsibility under MiFID; and
- (e) notify the competent authority and where the trading venue is not established in Malta, the European regulatory authority of the trading venue at which the Maltese investment firm provides direct electronic access accordingly.

(2) The competent authority may require the Maltese investment firm to provide, on a regular or *ad hoc* basis, a description of the systems and controls referred to in paragraph (a) of subregulation (1) and evidence that those have been applied.

(3) The competent authority shall, on the request of a European regulatory authority of a trading venue, in relation to which the Maltese investment firm provides direct electronic access, communicate without undue delay the information referred to in subregulation (2) that it receives from the Maltese investment firm.

(4) The Maltese investment firm shall arrange for records to be kept in relation to the matters referred to in this regulation and shall ensure that those records be sufficient to enable the competent authority to monitor compliance with the requirements of the MiFID.

Investment firms acting as a general clearing member for other persons.

**8.** A Maltese investment firm that acts as a general clearing member for other persons shall have in place effective systems and controls to ensure clearing services are only applied to persons who are suitable and meet clear criteria and that appropriate requirements are imposed on those persons to reduce risks to the Maltese investment firm and to the market. The Maltese investment firm shall ensure that there is a binding written agreement between the Maltese investment firm and the person regarding the essential rights and obligations arising from the provision of that service.

Administrative Penalties, other administrative measures and Appeals.

**9. (1)** Where a person falling within the scope of these regulations fails to comply with any provisions of such regulations or any rules issued thereunder further implementing such regulations, the competent authority may, by notice in writing and without recourse to a court hearing, impose on such person an administrative penalty and other administrative measures in accordance with the provisions of the Financial Markets Act (MiFID and MiFIR Administrative Penalties, Measures and Investigatory Powers) Regulations or the Investment Services Act (MiFID and MiFIR Administrative Penalties, Measures and Investigatory Powers).

(2) A right of appeal to the Financial Services Tribunal shall lie from the

decisions which the competent authority shall take under these regulations and the provisions of Part VI of the Financial Markets Act or Article 19 of the Investment Services Act shall apply *mutatis mutandis*.

Power to issue  
Investment  
Services Rules.

**10.** For the better carrying out of the provisions of these regulations, the competent authority may, from time to time, issue and publish Investment Service Rules which shall be binding on investment firms and others as may be specified therein.

DRAFT