

L.N._____ of 2017

FINANCIAL MARKETS ACT
(CAP. 345)

INVESTMENT SERVICES ACT
(CAP. 370)

Data Reporting Services Regulations, 2017

IN exercise of the powers conferred by article 49 of the Financial Markets Act and article 12 of the Investment Services 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 Data Reporting Services Regulations, 2017.

(2) The purpose of these regulations is to transpose and implement Article 4(1) paragraphs (20), (52) to (54), Article 59(1) and (2), the first and third subparagraphs of subarticle (3) and 59(4), Article 60, Article 61(1) to (3), Article 62, Article 63(1), (3), (4) and (5), Article 64(1) to (5), Article 65(1) to (5) and Article 66(1) to (5) of MiFID as herein defined, and they shall be interpreted and applied accordingly.

Definitions.

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

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“the Acts” means the Financial Markets Act and the Investment Services Act;

“APA” means a person authorised under these regulations to provide the service of publishing trade reports on behalf of investment firms pursuant to Articles 20 and 21 of MiFIR;

“ARM” means a person authorised under these regulations to provide the service of reporting details of transactions to competent authorities or to ESMA on behalf of investment firms;

“CTP” means a person authorised under these regulations to

provide the service of collecting trade reports for financial instruments listed in Articles 6, 7, 10, 12, 13, 20 and 21 of MiFIR from regulated markets, MTFs, OTFs and APAs and consolidating them into a continuous electronic live data stream providing price and volume data per financial instrument;

“data reporting services” shall mean:

- (1) operating an APA;
- (2) operating a CTP;
- (3) operating an ARM;

“data reporting services provider” means an APA, a CTP or an ARM;

“ESMA” means the European Securities and Markets Authority established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010;

“ “home Member State” means, in the case of a data reporting services provider:

- (a) if the data reporting services provider is a natural person, the Member State or EEA State in which its head office is situated;
- (b) if the data reporting services provider is a legal person, the Member State or EEA State in which its registered office is situated;
- (c) if the data reporting services provider has, under its national law, no registered office, the Member State or EEA State in which the head office is situated;

“investment firm” means any person, other than persons to whom MiFID does not apply in terms of Article 2 of the said Directive, whose regular occupation or business is the provision of any one or more investment services to third parties on a professional basis;

“management body” means the body or bodies of a data reporting services provider which are appointed in accordance with Maltese law, which are empowered to set the entity’s strategy, objectives and overall direction, and which oversee and monitor management decision-making and include persons who effectively direct the business of the entity;

“MiFID” means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments as amended from time to time and includes any implementing measures that may have been or may be issued

thereunder;

“MiFIR” means Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments as amended from time to time;

“systematic internaliser” means an investment firm which, on an organised, frequent systematic and substantial basis, deals on own account when executing client orders outside a regulated market, an MTF or an OTF without operating a multilateral system. The frequent and systematic basis shall be measured by the number of OTC trades in the financial instrument carried out by the investment firm on own account when executing client orders. The substantial basis shall be measured either by the size of the OTC trading carried out by the investment firm in relation to the total trading of the investment firm in a specific financial instrument or by the size of the OTC trading carried out by the investment firm in relation to the total trading in the Union in a specific financial instrument. This definition shall apply only where the pre-set limits for a frequent and systematic basis and for a substantial basis are both crossed or where an investment firm chooses to opt-in under the systematic internaliser regime.

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

Part I

Authorisation procedures for data reporting services providers

Requirement for
authorisation.

3. (1) The provision of the data reporting services as a regular occupation or business shall be subject to prior authorisation granted in accordance with these regulations. The authorisation shall be granted by the competent authority.

(2) Notwithstanding the provisions of subregulation (1), the competent authority shall allow an investment firm or a market operator operating a trading venue to operate the data reporting services of an APA, a CTP and an ARM, subject to the prior verification of their compliance with the provisions of these regulations. This service shall be included in their licence.

(3) The competent authority shall keep a register of all data reporting services providers. The register shall be publicly accessible and shall contain information on the services for which the data reporting services provider is authorised. It shall be updated on a regular basis.

(4) The competent authority shall notify every authorisation issued in terms of this Part of the regulations to ESMA.

(5) The competent authority shall supervise and shall keep

under review all data reporting services providers to provide their services in terms of these regulations. It shall also ensure that data reporting services providers comply at all times with the conditions for initial authorisation prescribed in terms of these regulations.

Scope
authorisation.

for 4. (1). The authorisation granted by the competent authority shall specify the data reporting service which the data reporting services provider is authorised to provide.

(2) A data reporting services provider seeking to extend its business to additional data reporting services shall submit a request for extension of its authorisation.

(3) The authorisation granted by the competent authority to a data reporting service provider in terms of these regulations shall be valid for the entire Union and shall allow a data reporting services provider to provide the services, for which it has been authorised, throughout the Union.

Procedures
granting and refusing
requests
authorisation.

for 5. (1) The competent authority shall not grant authorisation unless and until such time as it is fully satisfied that the applicant complies with all requirements prescribed in these regulations.

(2) The data reporting services provider shall provide all information, including a programme of operations setting out, *inter alia*, the types of services envisaged and the organisational structure, necessary to enable the competent authority to satisfy itself that the data reporting services provider has established, at the time of initial authorisation, all the necessary arrangements to meet its obligations as prescribed in these regulations.

(3) Within six months from the date of the submission of a complete application, the competent authority shall inform the applicant in writing of its decision whether or not to grant a licence.

Withdrawal
authorisation.

of 6. (1) The competent authority may withdraw the authorisation granted to a data reporting services provider where the provider:

- (a) does not make use of the authorisation within 12 months;
- (b) expressly renounces the authorisation;
- (c) has provided no data reporting services for the preceding six months;
- (d) has obtained the authorisation by making false statements or by any other irregular means;
- (e) no longer meets the conditions under which authorisation was granted; or
- (f) has seriously and systematically infringed the provisions of MiFID or of MiFIR.

(2) Where the competent authority has withdrawn an authorisation in accordance with subregulation (1), it shall notify ESMA thereof.

Requirements for the management body of a data reporting services provider.

7. (1) All the members of the management body of a data reporting services provider shall at all times be of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties.

(2) The management body shall possess adequate collective knowledge, skills and experience to be able to understand the activities of the data reporting services provider. Each member of the management body shall act with honesty, integrity and independence of mind to effectively challenge the decisions of the senior management where necessary and to effectively oversee and monitor management decision-making where necessary.

(3) Where a market operator seeks authorisation to operate an APA, a CTP or an ARM and the members of the management body of the APA, the CTP or the ARM are the same as the members of the management body of the regulated market, those persons are deemed to comply with the requirement prescribed in subregulation (1).

(4) A data reporting services provider shall notify the competent authority of all members of its management body and of any changes to its membership, along with all information needed to assess whether the entity complies with the provisions of subregulations (1) to (3).

(5) The management body of a data reporting services provider shall be required to define and oversee the implementation of the governance arrangements that ensure effective and prudent management of an organisation including the segregation of duties in the organisation and the prevention of conflicts of interest, and in a manner that promotes the integrity of the market and the interest of its clients.

(6) The competent authority shall refuse authorisation if it is not satisfied that the person or the persons who shall effectively direct the business of the data reporting services provider are of sufficiently good repute, or if there are objective and demonstrable grounds for believing that proposed changes to the management of the provider pose a threat to its sound and prudent management and to the adequate consideration of the interest of its clients and the integrity of the market.

Part II

Conditions for APAs

Organisational requirements for APAs.

8. (1) An APA shall have adequate policies and arrangements in place to make public the information required under Articles 20 and 21 of MiFIR as close to real time as is technically possible, on a reasonable commercial basis. The information shall be made available free of charge 15 minutes after the APA has published it.

(2) The APA must be able to efficiently and consistently

disseminate the information referred to in subregulation (1) in a way that ensures fast access to the information, on a non-discriminatory basis and in a format that facilitates the consolidation of the information with similar data from other sources.

(3) The information made public by an APA in accordance with subregulations (1) and (2) shall include, at least, the following details:

- (a) the identifier of the financial instrument;
- (b) the price at which the transaction was concluded;
- (c) the volume of the transaction;
- (d) the time of the transaction;
- (e) the time the transaction was reported;
- (f) the price notation of the transaction;
- (g) the code for the trading venue the transaction was executed on, or where the transaction was executed via a systematic internaliser the code 'SI' or otherwise the code 'OTC';
- (h) if applicable, an indicator that the transaction was subject to specific conditions.

(4) The APA shall operate and maintain effective administrative arrangements designed to prevent conflicts of interest with its clients. In particular, an APA who is also a market operator or investment firm shall treat all information collected in a non-discriminatory fashion and shall operate and maintain appropriate arrangements to separate different business functions.

(5) The APA shall have sound security mechanisms in place designed to guarantee the security of the means of transfer of information, minimise the risk of data corruption and unauthorised access and to prevent information leakage before publication. The APA shall maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.

(6) The APA shall have systems in place that can effectively check trade reports for completeness, identify omissions and obvious errors and request re-transmission of any such erroneous reports.

Part III

Conditions for CTPs

Organisational
requirements
for
CTPs.

9. (1) A CTP shall have adequate policies and arrangements in place to collect the information made public in accordance with Articles 6 and 20 of MiFIR, consolidate it into a continuous electronic data stream and make the information available to the public as close to real time as is technically possible, on a reasonable commercial basis.

(2) The information referred to in subregulation (1) shall include, at least, the following details:

- (a) the identifier of the financial instrument;
- (b) the price at which the transaction was concluded;

- (c) the volume of the transaction;
- (d) the time of the transaction;
- (e) the time the transaction was reported;
- (f) the price notation of the transaction;
- (g) the code for the trading venue the transaction was executed on, or where the transaction was executed via a systematic internaliser the code 'SI' or otherwise the code 'OTC';
- (h) where applicable, the fact that a computer algorithm within the investment firm was responsible for the investment decision and the execution of the transaction;
- (i) if applicable, an indicator that the transaction was subject to specific conditions;
- (j) if the obligation to make public the information referred to in Article 3(1) of MiFIR was waived in accordance with point (a) or (b) of Article 4(1) of that Regulation, a flag to indicate which of those waivers the transaction was subject to.

(3) The information referred to in subregulation (1) shall be made available free of charge 15 minutes after the CTP has published it. The CTP shall be able to efficiently and consistently disseminate such information in a way that ensures fast access to the information, on a non-discriminatory basis and in formats that are easily accessible and utilisable for market participants.

(4) A CTP shall have adequate policies and arrangements in place to collect the information made public in accordance with Articles 10 and 21 of MiFIR, consolidate it into a continuous electronic data stream and make following information available to the public as close to real time as is technically possible, on a reasonable commercial basis including, at least, the following details:

- (a) the identifier or identifying features of the financial instrument;
- (b) the price at which the transaction was concluded;
- (c) the volume of the transaction;
- (d) the time of the transaction;
- (e) the time the transaction was reported;
- (f) the price notation of the transaction;
- (g) the code for the trading venue the transaction was executed on, or where the transaction was executed via a systematic internaliser the code 'SI' or otherwise the code 'OTC';
- (h) if applicable, an indicator that the transaction was subject to specific conditions.

(5) The information referred to in subregulation (4) shall be made available free of charge 15 minutes after the CTP has published it. The CTP shall be able to efficiently and consistently disseminate such information in a way that ensures fast access to the information, on a non-discriminatory basis and in generally accepted formats that are interoperable and easily accessible and utilisable for market participants.

(6) The CTP shall ensure that the data provided is consolidated

from all the regulated markets, MTFs, OTFs and APAs and for the financial instruments as specified by regulatory technical standards issued pursuant to Article 65(8)(c) of MiFID.

(7) The CTP shall operate and maintain effective administrative arrangements designed to prevent conflicts of interest. In particular, a market operator or an APA, who also operate a consolidated tape, shall treat all information collected in a non-discriminatory fashion and shall operate and maintain appropriate arrangements to separate different business functions.

(8) The CTP shall have sound security mechanisms in place designed to guarantee the security of the means of transfer of information and to minimise the risk of data corruption and unauthorised access. The CTP shall maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.

Part IV

Conditions for ARMs

Organisational
requirements
for
ARMs.

10. (1) An ARM shall have adequate policies and arrangements in place to report the information required under Article 26 of MiFIR as quickly as possible, and no later than the close of the working day following the day upon which the transaction took place. Such information shall be reported in accordance with the requirements laid down in Article 26 of MiFIR.

(2) An ARM shall operate and maintain effective administrative arrangements designed to prevent conflicts of interest with its clients. In particular, an ARM that is also a market operator or investment firm shall treat all information collected in a non-discriminatory fashion and shall operate and maintain appropriate arrangements to separate different business functions.

(3) An ARM shall have sound security mechanisms in place designed to guarantee the security and authentication of the means of transfer of information, minimise the risk of data corruption and unauthorised access and to prevent information leakage, maintaining the confidentiality of the data at all times. The ARM shall maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.

(4) The ARM shall have systems in place that can effectively check transaction reports for completeness, identify omissions and obvious errors caused by the investment firm and where such error or omission occurs, to communicate details of the error or omission to the investment firm and request re-transmission of any such erroneous reports.

(5) The ARM shall also have systems in place to enable the ARM

to detect errors or omissions caused by the ARM itself and to enable the ARM to correct and transmit, or re-transmit as the case may be, correct and complete transaction reports to the competent authority.

Part V

Administrative Penalties, other measures and Appeals

Administrative
Penalties,
administrative
measures
Appeals.

other
and

11. (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*.