

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Explanatory Note

Date: 28th April 2008

Subject: Transposition of Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of the Transparency Directive

The Malta Financial Services Authority invites comments, by Monday 12th May 2008 on the draft amendments that have been made to the Listing Rules in order to transpose Directive 2007/14/EC. The attached documents include the amendments the Authority is proposing to Chapters 8 and 9 of the Listing Rules. These amendments are being highlighted using the track changes tool. Since the attached document includes the input of the Working Committee representing the major stake holders in the industry which was set up to review the Listing Rules, the Authority decided to grant a period of two weeks for purposes of consultation. Interested parties are invited to send their comments in writing addressed to Dr. Michelle Mizzi Buontempo, Deputy Director, Company Compliance Unit, MFSA or via e-mail on cocomp@mfsa.com.mt.

Introduction

Background

Directive 2007/14/EC contains detailed rules that implement particular provisions of the Transparency Directive and, as in the case of the latter Directive, such rules are meant to ensure a high level of investor protection as well as to enhance market efficiency. The provisions of the Transparency Directive that are further implemented by Directive 2007/14/EC are those dealing with:

- a) the procedural arrangements by means of which investors are informed of the Issuer's choice of Home Member State;
- b) the minimum content of the condensed set of half-yearly financial statements, where the Issuer is not required to prepare consolidated accounts;
- c) the minimum related parties transactions to be disclosed by issuers of shares in the interim directors report, depending on whether the issuer is required to prepare consolidated accounts or not;

- d) the meaning of 'short settlement cycle' used in connection with the exemption from notification of major holdings granted to persons acquiring shares solely for clearing and settling;
- e) conditions to be observed by market makers in order to benefit from the exemption from the requirement to notify the acquisition or disposal of major holdings;
- f) the applicable calendar of trading days for the purposes of articles 12(2) and (6) and 14(1) of the Transparency Directive;
- g) notification procedures in relation to the obligation of shareholders or other individuals or legal entities to notify the issuer of the acquisition or disposal of major holdings;
- h) the method of determining when the shareholder or the natural person or legal entity referred to in paragraph (g) gets to know of the acquisition or disposal of major holdings;
- i) conditions of independence to be complied with by management companies and investment firms involved in individual portfolio management;
- j) the types of financial instruments that result in an entitlement to acquire, on the holder's own initiative, shares to which voting rights are attached, referred to in article 13(1) of the Transparency Directive;
- k) minimum standards to be observed with respect to the disclosure of regulated information;
- l) conditions to be satisfied by issuers registered in third countries in order for them to be considered to comply with requirements that are equivalent to those established by the Transparency Directive.

This note explains the main issues which are involved in transposing Directive 2007/14/EC into Maltese law.

a) *Procedural arrangements for the choice of the home Member State*

Article 2 of Directive 2007/14/EC implements article 2(i)(ii) of the Transparency Directive and requires the choice made by the Issuer of its home Member State to be disclosed in the same manner as regulated information.

The Authority intends to introduce provisions at the beginning of Chapter 8 (Listing Rules 8.5b and 8.5c) specifying when Malta is deemed to be the home Member State or the host Member State of an issuer. Article 2 of Directive 2007/14/EC will be implemented by means of Listing Rule 8.5e that cross-refers to a new section that will be introduced in Chapter entitled 'Access to Regulated Information', thus showing that the choice of home Member State made by an Issuer needs to be disclosed in the same way as regulated information.

In addition to this, a new Listing Rule will be added to Chapter 8 (Listing Rule 8.5a) which makes it clear that Chapter 8 will, subject to any applicable exemptions, apply to issuers whose securities are admitted to listing on a regulated market and whose home Member State is Malta.

b) Minimum content of half-yearly non-consolidated financial statements

Article 3 of Directive 2007/14/EC implements the second sub-paragraph of article 5(3) of the Transparency Directive relating to the content of the condensed set of half-yearly financial statements where the Issuer is not required to prepare consolidated accounts.

When implementing this article the Authority decided to introduce new listing rules in Chapter 9 which will replace Listing Rules 9.36 to 9.44 so as to bring them in line with the provisions of the Transparency Directive and Directive 2007/14/EC regulating the content of the annual and half-yearly financial reports.

Paragraphs 2 and 3 of Article 3 of Directive 2007/14/EC will be transposed by the newly introduced Listing Rules 9.44n to 9.44p.

c) Major related parties' transactions

Article 5(4) of the Transparency Directive requires the interim directors' report, which forms part of the half-yearly financial report, to also include major related parties' transactions in the case of an issuer of shares.

Article 4(1) of Directive 2007/14/EC contains further information on the minimum related parties' transactions that have to be disclosed by such an issuer and the Authority intends to implement the said provision by means of the newly introduced Listing Rule 9.44r.

In the case of an issuer that is not required to prepare consolidated accounts, Article 4(2) of Directive 2007/14/EC requires it to at least disclose the related parties' transactions referred to in Article 43(1)(7b) of Directive 78/660/EEC on the annual accounts of certain types of companies. The Authority will transpose this provision through the newly added Listing Rules 9.44s and 9.44t.

d) Maximum length of the usual 'short settlement cycle'

Article 9(4) of the Transparency Directive provides that the obligation to notify the acquisition or disposal of major holdings in an issuer does not apply to shares acquired for the sole purpose of clearing and settling within 'the usual short settlement cycle.'

Under Article 5 of Directive 2007/14/EC, the maximum length of the usual 'short settlement cycle' is three trading days following the transaction.

The Authority will implement this provision by amending Listing Rule 8.123.1. Moreover, the exemption relating to shares held by custodians will be inserted in a separate Listing Rule 8.123.2.

e) Control mechanisms by competent authorities as regards market makers

In order for market makers to benefit from the exemption granted to them by Article 9(5) of the Transparency Directive, Article 6(1) of Directive 2007/14/EC requires the said market makers to notify the competent authority of the Home Member State, within the time-limit established by article 12(2) of the Transparency Directive, that they conduct or intend to conduct market making activities on a particular issuer. The competent authority should also be notified if the market maker concerned ceases to conduct market making activities on a particular issuer.

The Authority will transpose article 6(1) of Directive 2007/14/EC by amending current Listing Rule 8.127.2 (renumbered as 8.123.3) and introducing Listing Rules 8.124 and 8.125.

Article 6(2) of Directive 2007/14/EC allows the competent authority of the issuer to request the market maker to identify the shares or financial instruments held for market making activities and it specifies the manner in which such identification can be made. In order to implement this provision, new Listing Rules 8.126 and 8.127 have been added to Chapter 8.

The Authority is not required to transpose Article 6(3) of Directive 2007/14/EC since, under Maltese law, no market making agreement is required to be entered into between the market maker and the stock exchange and/or the issuer.

f) Calendar of trading days

Article 7(1) of Directive 2007/14/EC lays down that for the purposes of Article 12(2) and (6) and Article 14(1) of the Transparency Directive, the calendar of trading days of the home Member State of the issuer shall apply.

Article 7(2) of Directive 2007/14/EC then requires the competent authority of each Member State to publish on its website the calendar of trading days of the different regulated markets situated or operating on the territory within its jurisdiction.

The Authority will implement both paragraphs of this Article by introducing a new section in Chapter 8 entitled 'Calendar of trading days' (Listing Rules 8.128k and 8.128l).

g) Shareholders and natural persons or legal entities referred to in Article 10 of the Transparency Directive required to make the notification of major holdings

Article 8 of Directive 2007/14/EC specifies the nature of the obligation of the shareholders and natural or legal entities to notify the Issuer of any acquisition or disposal of major holdings, with particular reference to the case contemplated in paragraph (a) of Article 10 of the Transparency Directive. The said article also specifies how such notification is to be made in the case where a proxy is given to an individual or legal entity and such individual or legal entity can exercise the voting rights at its discretion in the absence of specific instructions from the shareholders.

The Authority will transpose the requirements prescribed by this Article by introducing Listing Rules 8.112 to 8.115

h) Circumstances under which the notifying person should have learned of acquisition or disposal or of possibility to exercise voting rights

Article 12(2) of the Transparency Directive requires the notification of major holdings to be made not later than four (4) trading days, the first of which is the day after the date on which the shareholder, or the natural person or legal entity referred to in Article 10 of the said Directive, learns of the acquisition or disposal or of the possibility of exercising voting rights, or on which, having regard to the circumstances, should have learned of it.

In terms of Article 9 of Directive 2007/14/EC, the shareholder, or the natural person or legal entity is deemed to have such knowledge no later than two (2) trading days following the transaction. This provision will be transposed into Maltese law by the addition of Listing Rule 8.118a to Chapter 8.

i) Conditions of independence to be complied with by management companies and investment firms involved in individual portfolio management

Under Article 12(4) and (5) parent undertakings of management companies or investment firms are exempted from aggregating their holdings with the holdings managed by such companies or firms provided that certain conditions are satisfied.

Article 10(1) of Directive 2007/14/EC lays down further requirements which a parent undertaking of a management company or an investment firm has to satisfy and this provision will be implemented by the newly introduced Listing Rules 8.128b and 8.128d.

In addition to this, Article 10(2) of Directive 2007/14/EC requires parent undertakings that wish to make use of such an exemption to notify certain information to the competent authority of the home Member State of the issuer whose voting rights are attached to holdings managed by the management companies or investment firms. Where the parent undertaking wishes to benefit from the exemption only with respect to those financial instruments that are referred to in Article 13 of the Transparency Directive, it only needs to notify to the relevant competent authority the information referred to in Article 2(a) of Directive 2007/14/EC.

The Authority intends to transpose the provisions referred to in the preceding paragraph by new Listing Rules 8.128f to 8.128h.

In terms of article 10(4) of Directive 2007/14/EC, a parent undertaking of a management company or investment firm may be requested by the competent authority of the home Member State of the Issuer to demonstrate that it satisfies certain criteria. Such provision will be implemented by the newly introduced Listing Rules 8.128i and 8.128j.

Article 10(5) of Directive 2007/14/EC contains definitions of “direct” and “indirect” instruction and the said definitions have been introduced into Chapter 8 by means of Listing Rule 8.128a.

For purposes of clarity, the Authority has combined all the provisions implementing Article 12(4) and (5) of the Transparency Directive and Article 10 of Directive 2007/14/EC under a separate section entitled “Notification by management companies and investment firms.”

j) *Types of financial instruments that result in an entitlement to acquire, on the holder's own initiative alone, shares to which voting rights are attached*

The obligation to notify the issuer of an acquisition or disposal of major holdings also applies, according to Article 13 of the Transparency Directive, to natural persons or legal entities that hold, directly or indirectly, financial instruments that result in an entitlement to acquire, on the holder's own initiative alone, under a formal agreement, shares to which voting rights are attached, already issued, of an issuer whose shares are admitted to trading on a regulated market.

Article 11(1) of Directive 2007/14/EC states what constitutes ‘financial instruments’ for the purposes of Article 13 of the Transparency Directive and lays down the condition that the instrument holder must enjoy on maturity, either the unconditional right to acquire the underlying shares or the discretion as to his right to acquire such shares or not. A definition of ‘formal agreement’ is also contained in the said provision.

Under Article 11(2) of Directive 2007/14/EC, all financial instruments relating to the same underlying issuer must be aggregated and notified by the holder of such instruments. The contents of the notification which the instrument holder is required to make in terms of Article 13 of the Transparency Directive are those referred to in Article 11(3) of Directive 2007/14/EC.

The period within which and the persons to whom such notification has to be made are laid down in paragraphs (4) and (5) of Article 11 of Directive 2007/14/EC.

Article 11 of Directive 2007/14/EC will be transposed into Maltese law by means of the newly added Listing Rules 8.116, 8.116a, 8.116b, 8.116c, 8.117 and 8.117a.

k) *Minimum standards*

Article 21 of the Transparency Directive lays down certain requirements that need to be satisfied when regulated information is disclosed to the public and Article 12 of Directive 2007/14/EC further specifies what minimum standards need to be observed by issuers when they are disseminating regulated information.

The Authority felt it was advisable to group all the provisions dealing with access to and disclosure of regulated information into one section so as to be in line with the format adopted by the Transparency Directive. In fact, a section will be introduced into Chapter 8 entitled “Access to regulated information” (Listing Rules 8.141a to 8.141m) which implements Articles 21 and 23(3) of the Transparency Directive and Article 12 of Directive 2007/14/EC.

I) Requirements equivalent to certain provisions of the Transparency Directive

Under Article 23(1) of the Transparency Directive, where the registered office of an issuer is in a third country, the competent authority of the home Member State may exempt such issuer from requirements under Articles 4 to 7 and Articles 12(6), 14, 15 and 16 to 18, as long as the law of that third country lays down equivalent requirements or such an issuer complies with requirements of the law of a third country that the competent authority of the home Member State considers as equivalent.

Articles 13 to 23 of Directive 2007/14/EC contain the conditions that issuers registered in a third country need to satisfy in order for them to be considered to comply with requirements that are equivalent to those established by the Transparency Directive.

The Authority has introduced a separate section in Chapter 8 dealing with issuers registered in a non-EU or EEA State. Listing Rules 8.130a to 8.130i, 8.132, 8.132a, 8.133a to 8.133f will transpose Articles 13 to 23 of Directive 2007/14/EC into Maltese law.