

# **SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE**

**No. 3965 of 22 November, 2012**

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LEGAL NOTICE NO. OF 170 2012.

## **INTERPRETATION AND GENERAL CLAUSES ACT**

### **MARKET ABUSE ACT 2005 (AMENDMENT) REGULATIONS 2012**

In exercise of the powers conferred on it by section 23(g)(ii) of the Interpretation and General Clauses Act and in order to transpose into the law of Gibraltar Article 3 of Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) and to further transpose Article 16 of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse), the Government has made the following Regulations–

#### **Title and commencement.**

1. These Regulations may be cited as the Market Abuse Act 2005 (Amendment) Regulations 2012 and come into operation on the day of publication.

#### **Amendment of the Market Abuse Act 2005.**

2.(1) The Market Abuse Act 2005 is amended in accordance with the provisions of this regulation.

(2) Section 36 is amended by numbering the existing provision subsection “(1)” and inserting thereafter the following subsection–

“(2) The Government shall ensure the European Securities and Markets Authority is provided annually with aggregated information regarding all civil or criminal proceedings under this Part and where such proceedings are made public, the

Government shall contemporaneously report that fact to the European Securities and Markets Authority.”

- (3) The following sections are inserted after section 41A–

**“Assistance to the European Securities and Markets Authority.**

41B.(1) The competent authority shall cooperate with the European Securities and Markets Authority for the purposes of this Act, in accordance with Regulation (EU) No 1095/2010.

- (2) The competent authority shall, without delay, provide the European Securities and Markets Authority with all information necessary to carry out its duties, in accordance with Article 35 of Regulation (EU) No 1095/2010.

**Cooperation etc. with other competent authorities.**

41C.(1) The competent authority shall–

- (a) cooperate with its equivalent competent authorities in EEA States whenever it is necessary for the purpose of carrying out of any duties or making use of any powers, whether these arise from the Directive or any other enactment or rule of law; and
  - (b) render assistance to those competent authorities, and in particular, it shall exchange information with them and cooperate in investigation activities.
- (2) Upon the request of the competent authority of an EEA State the competent authority shall immediately–
- (a) supply any information required for the purposes set out in subsection (1);
  - (b) take the necessary measures to gather the required information,

but where it is not possible for the competent authority to provide the requested information immediately it shall notify the requesting competent authority of the reasons for the delay.

**Confidentiality to be preserved.**

41D. Where the competent authority is the recipient of information requested by it pursuant to Article 16 of the Directive, that information shall remain confidential shall be covered by the obligation of professional secrecy to which the persons employed or formerly employed by the competent authority receiving the information are subject.

**Refusal of request for information.**

41E.(1) The competent authority may refuse to act on a request for information under this section where—

- (a) the communication might adversely affect the sovereignty, security or public policy of Gibraltar;
- (b) judicial proceedings have been initiated in Gibraltar in respect of the same actions and against the same persons; or
- (c) where final judgment has already been delivered in relation to such persons for the same actions in Gibraltar.

(2) Where this subsection (1) applies the competent authority shall notify the requesting competent authority accordingly and provide as much detailed information as possible on the proceedings or the judgment concerned.

**Reference to European Securities and Markets Authority.**

41F. Where the competent authority makes a request for information to an equivalent competent authority in an EEA State and the request is either not acted upon within a reasonable time or is rejected, the competent authority may refer that rejection or absence of action within a reasonable timeframe to the European Securities and Markets Authority.

**Use of information.**

41G.(1) Where the competent authority receives information pursuant to a request under Article 16(1) of the Directive such information may only be used—

- (a) in the exercise of its functions under this Act; and
- (b) in the context of administrative or judicial proceedings specifically related to the exercise of those functions.

(2) Subsection (1) shall not apply where the requested competent authority consents and in such a case the competent authority may use information received for other purposes and may forward it to other equivalent competent authorities.

**Obligation to notify other competent authority.**

41H. Where the competent authority is convinced that—

- (a) acts contrary to the provisions of the Directive are being, or have been, carried out on the territory of an EEA State; or
- (b) acts are affecting financial instruments traded on a regulated market situated in an EEA State,

the competent authority shall, pursuant to Article 16(3) of the Directive, give notice of that fact in as specific a manner as possible to the competent authority of the State concerned.

**Notification by other competent authority.**

41I. Where the competent authority receives a notification pursuant to Article 16(3) of the Directive it shall take appropriate action and inform the competent authority which notified it, so far as possible, of significant interim developments, and of the outcome.

**Notification not to prejudice competent authority.**

41J. The competences of a competent authority which issues a notification under Article 16(3) of the Directive shall not be prejudiced by the making of that notification.

**Consultation on follow-up action.**

41K. Where section 41H or 41I applies, the competent authority shall consult with the competent authorities of the various EEA States that are competent for the purposes of Article 10 of the Directive on the proposed follow-up to their action.

**Request for investigation etc.**

41L.(1) The competent authority or an equivalent competent authority from an EEA State may request—

(a) that an investigation be carried out on each other's territory; or

(b) that its agents or employees be allowed to accompany the personnel of the requested competent authority during the course of the investigation.

(2) An investigation to which subsection (1) applies shall be subject throughout to the overall control of the competent authority on whose territory it is conducted.

**Refusal of section 41L request.**

41M.(1) The competent authority may refuse to act on a request under section 41L (for an investigation to be conducted in Gibraltar or a request for its employees or agents to be accompanied by personnel of the requesting competent authority) where—

(a) such an investigation might adversely affect the sovereignty, security or public policy of Gibraltar;

- (b) judicial proceedings have already been initiated in respect of the same actions and against the same persons in Gibraltar; or
  - (c) where a final judgment has already been delivered in relation to such persons for the same actions in Gibraltar.
- (2) Where subsection (1) applies the requesting competent authority shall be notified by the competent authority of the refusal and of information, as detailed as possible, on the relevant proceedings or judgment.

**Notification of refusal or delay to European Securities and Markets Authority.**

41N. Where—

- (a) a request for an investigation to be conducted; or
- (b) a request for employees or agents to accompany personnel of the requested competent authority under article 16(4) of the Directive,

is not acted upon within a reasonable time or is rejected, the competent authority may within a reasonable timeframe refer that rejection or absence of action to the European Securities and Markets Authority.”.

Dated 22nd November, 2012.

G H LICUDI QC,  
For the Government.

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### **EXPLANATORY MEMORANDUM**

These Regulations transpose into the law of Gibraltar Article 3 of Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).

Article 3 makes a number of amendments to Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse).

The amendments to the Directive supplement provisions dealing with cooperation with the European Securities and Markets Authority and the competent authorities of EEA States.

These Regulations also provide further transposition of Article 16 of Directive 2003/6/EC on market abuse.