



Before printing this document, please be aware of its size!

Regarding the provisions quoted in the response below, as far as possible, hyperlinks to these provisions (in the respective language or, if available, in English) are set out in Document CESR/04-075 for each country.

IMPORTANT NOTICE

In the interest of transparency and to inform interested parties, CESR has published the following (together the “Tables”):

- *the Correspondence Tables on the CESR Standards for Investor Protection (Ref. CESR/03-416b to 423b, CESR/03-134/Country);*
- *the Correspondence Tables on the CESR Standards for Alternative Trading Systems (Ref. CESR/03-415b, CESR/03-135/Country);*
- *the Synthesis Tables (Ref. CESR/03-427b and CESR/03-432b);*
- *the List of Alternative Trading Systems currently operating in Member States¹ (Ref. CESR/03-497b);*
- *the explanatory notes and caveats attached to the Tables.*

The Tables were produced by the Members of CESR¹ within the constraints of and solely for the purposes of the CESR Review Panel process of monitoring the status of implementation of the CESR Standards for Investor Protection² and the CESR Standards for Alternative Trading Systems³ in Member States.

The Tables have no legal effect; they do not present any interpretation of, or definitive position on, existing law or regulation in any jurisdiction. The Tables should not be relied upon for any purpose other than the purpose for which they were prepared. In particular, they should not be relied upon as a substitute for, or as guidance on, any aspect of the regulatory system of any Member State or as a defence in supervisory activities or enforcement proceedings; and they cannot be used to restrict competent authorities in taking regulatory or enforcement actions.

The information set out in the Tables is the response of each Member’s self-assessment. For this reason, the content of the Tables regarding a particular Member State has been prepared solely by the relevant Member on a best-efforts basis. (In a next step, the CESR Review Panel is going to conduct a common and collective peer exercise in reviewing the responses from all Members.) In case of discrepancy between the tables containing the responses from all CESR Members and the tables containing the individual responses from a particular CESR Member, the latter should be referred to.

The Tables provide a “snap shot” and will be up-dated on a regular basis to take account of regulatory developments in Member States. Therefore, they cannot be considered as fully finalised or definitive reflections of regulatory provisions in Member States. The Tables should also be read in light of current and future developments in the formulation of the proposed Directive on Markets in Financial Instruments (“ISD2”) and the future Level 2 implementing measures, and without prejudice to the position of any Member State in those developments.

For a more detailed account of the process, methodology and first, interim results, please see the “First Interim Report” by the Review Panel (Ref. CESR/03-414b).

¹ For reasons of simplicity, the term “Member” in this context refers to all participants in the Review Panel, i.e. CESR Members, CESR Observers, and the Polish securities regulators; this applies to the term “Member State” accordingly.

² “A European Regime of Investor Protection - The Harmonization of Conduct of Business Rules” (Ref. CESR/01-014d, April 2002) and “A European Regime of Investor Protection – The Professional and the Counterparty Regimes” (Ref. CESR/02-098b, July 2002).

³ Ref. CESR/02-086b, July 2002.

CORRESPONDENCE TABLE ON STANDARDS FOR ALTERNATIVE TRADING SYSTEMS
(REF. CESR/02-086B)

MALTA

1. Market Integrity Standards for Alternative Trading Systems

Standard	Implementing authority(ies)	Implementing measure ⁴	Comments
----------	-----------------------------	-----------------------------------	----------

⁴ Any derogation to the application of the implementing measures should be mentioned.

<p><i>1. Investments firms should be required by their home state regulatory authority to notify the establishment of a qualifying system. They should also notify the home state regulatory authority (and, where different, the home state regulatory body in that member state responsible for the oversight of markets) of its key features and significant changes to its operation.</i></p>	<p>Malta Financial Services Authority ('the MFSA')</p>	<p>N.B. [Please consider the explanation provided in the next column before proceeding.]</p> <p>Any person (including an investment firm) wanting to provide the services of an investment exchange, which is interpreted <i>inter alia</i> to include <i>the provision of a system which brings together multiple third parties buying and selling interests in financial instruments</i>, requires a recognition order issued in terms of article 4 (1) (a) of the Financial Markets Act 1990 (FMA).</p> <p>To qualify for a recognition order an applicant is required to prove to the MFSA that it satisfies the recognition requirements set in Legal Notice 3 of 2003. In satisfying the recognition requirements an applicant may, to the satisfaction of the MFSA, outsource any of its functions.</p> <p>In view of the rules set in the recognition requirements, in particular, the requirement set in clause (4) of the Schedule to Legal Notice 3 of 2003, titled '<i>Systems and Controls</i>' an applicant for recognition is required <i>inter alia</i>, to disclose to the MFSA its key features and any significant changes to its operation.</p> <p>The recognition requirements are not only initial requirements but must also be satisfied by a person in possession of a recognition order, on a continuing and ongoing basis.</p>	<p>A 'qualifying system' is defined by the Standards as: <i>'a multilateral system, operated by an entity, which without being regulated as a regulated market, brings together multiple third party buying and selling interests in financial instruments – in the system and according to non-discriminatory rules set by the system's operator – in a way that results in a contract'</i>.</p> <p>The Maltese investment services regime as it stands today does not distinguish between an Investment Exchange and an Alternative Trading System. Thus all systems which have the purpose of allowing the matching of multiple third party interests would be considered as falling within the parameters of the local investment exchange regime which regulated by the Financial Markets Act 1990 ('the FMA').</p> <p>In fact, any person wanting to provide the services of an investment exchange which may be interpreted to <i>inter alia</i> include <i>the provision of a system which brings together multiple third parties buying and selling interests in financial instruments</i>, would require a recognition order in terms of article 4 (1) (a) of the Financial Markets Act.</p> <p>The required changes to local legislation to allow Investment Firms to operate a qualifying system without the need for a recognition order are presently being considered. However, for the time being, the replies to this document reflect the regulatory regime as it stands today.</p>
<p>3</p>			

<p><i>2. Investment firms operating a qualifying system should establish trading arrangements that result in fair and orderly trading.</i></p>	<p>As Above</p>	<p>Clauses (4) and (5) of the Schedule to Legal Notice 3 of 2003 a person (including an investment firm) granted a recognition order under the FMA, is required to ensure <i>inter alia</i> that:</p> <ul style="list-style-type: none"> (a) all the systems and controls used in the performance of its functions are adequate and appropriate for the scale and nature of its business; (b) business conducted by means of its facilities is conducted in an orderly manner and so as to afford proper protection to investors. <p>In assessing whether the above are satisfied the MFSA would <i>inter alia</i> consider whether the trading arrangement being proposed by the applicant result in a fair and orderly trading (market).</p>	
---	-----------------	--	--

<p><i>3. An investment firm operating a qualifying system providing trading in an instrument traded on a regulated market must make publicly available, on a reasonable commercial basis, information about quotes and/or orders that the qualifying system displays or advertises to the system users. Similarly, operators must make publicly available, on a reasonable commercial basis, information relating to completed transactions that the system provides to users.</i></p>	<p>As Above</p>	<p>In terms of clause (5) (1) of the Schedule to Legal Notice 3 of 2003, a person (including an investment firm) granted a recognition order under the FMA is required to ensure that business conducted by means if its facilities is conducted in an orderly manner and so as to afford proper protection to investors.</p> <p>In terms of clause (5) (3) (i) of the Schedule to Legal Notice 3 of 2003 the MFSA, in verifying whether the said person is complying with the above mentioned rule, reviews <i>inter alia</i> the arrangements and practises adopted by the said person to ensure sufficient pre- and post-trading transparency.</p>	
<p><i>4. Investment firms operating a qualifying system should monitor user compliance with the contractual rules of the system.</i></p>	<p>As Above</p>	<p>In terms of clause 9-(1) (a) of the Schedule to Legal Notice 3 of 2003 a person (including an investment firm) granted a recognition order under the FMA is required to have effective arrangements for monitoring and enforcing compliance with its rules.</p>	

<p><i>5. Investment firms operating a qualifying system should, where their home state regulatory authority requires it for the purposes of investor protection and market integrity, establish arrangements with that authority to facilitate satisfactory monitoring of the markets in the instruments traded and the detection of market abuse.</i></p>	<p>As Above</p>	<p>In terms of clause 5 (2) (I) of the Schedule to Legal Notice 3 of 2003 a person (including an investment firm) granted a recognition order under the FMA is required to adopt appropriate measures to reduce the extent to which its facilities can be used for a purpose connected with market abuse, insider dealing or any other criminal offence, and to facilitate their detection and monitor their incidence.</p> <p>Additionally in terms of clause 22 of the General notification directives applicable to Recognised Investment Exchanges (these directives have been attached as Appendix 2 to this document for ease of reference), a person (including an investment firm) granted a recognition order under the FMA is required to notify the MFSA by way of a written report of <i>inter alia</i> any suspicions of market abuse or insider dealing.</p>	
---	-----------------	--	--

<p>6. Investment firms operating a qualifying system should be able to demonstrate to the relevant home state regulatory authorities that (a) the system is capable of delivering the proposed service, (b) that there are satisfactory arrangements for the management of the technical operation of the system and (c) that there are satisfactory contingency arrangements in the event of system disruption.</p>	<p>As Above</p>	<p>In terms of clause 4 of the Schedule to Legal Notice 3 of 2003 a person (including an investment firm) granted a recognition order under the FMA is required to ensure that all the systems and controls used in the performance of its functions are adequate and appropriate for the scale of its business.</p> <p>In considering whether this requirements is satisfied the MFSA may in terms of clause 4 (3) of the Schedule to Legal Notice 3 of 2003 take <i>inter alia</i> into account the following:</p> <ul style="list-style-type: none"> (1) the information technology systems, including back-up systems to such information technology systems and its plans of action in the event of failure of any such information technology systems; (2) the arrangements by which it measures and controls different types of risks; (3) arrangements for risk management procedures. 	
<p>7. Investment firms operating qualifying systems should ensure that there is clarity of obligations and responsibilities for the clearing (where applicable) and settlement of transactions.</p>	<p>As Above</p>	<p>In terms of clause 4 (3) (I) of the Schedule to Legal Notice 3 of 2003 MFSA would verify whether a person (including an investment firm) granted a recognition order under the FMA has proper arrangements under which clearing and settlement instructions arising from a transaction are entered into the systems of the said person to the point at which any rights or liabilities arising from that transaction are discharged.</p>	

2. Application of Conduct of Business Rules to Alternative Trading Systems

Standard /Rule	Implementing authority(ies)	Implementing measure	Comments
<p><i>8. Investment firms operating a qualifying system should make clear the nature of the relationship between operator and user.</i></p>	As Above	<p>In terms of clause 8 (3) of the Schedule to Legal Notice 3 of 2003 a person (including an investment firm) granted a recognition order under the FMA is required to have rules which <i>inter alia</i> prescribe the criteria for the acquisition, retention and suspension of and disqualification from membership of the system.</p>	
<p><i>9. Investment firms operating a qualifying system should supply sufficient information about the system to enable a user to use the system efficiently and to understand any risks arising in using the system.</i></p>	As Above	<p>In terms of clause 8 (3) of the Schedule to Legal Notice 3 of 2003 a person (including an investment firm) granted a recognition order under the FMA is required to have rules which <i>inter alia</i> refer to procedures with respect to the trading, settlement and depositary services offered by the system provider.</p>	
<p><i>10. Investment firms operating a qualifying system should provide, or be satisfied that there is access to, sufficient publicly available information to enable users to form an investment judgement, taking into account both the nature of the users and the type of instruments traded.</i></p>	As Above	<p>Vide reply to point (3) above.</p> <p>Moreover, in terms of clause 5 (2) (c) of the Schedule to Legal Notice 3 of 2003 a person (including an investment firm) granted a recognition order under the FMA is required to ensure that appropriate arrangements are made for price sensitive information to be made available to the public.</p>	