REPUBLIC OF SAN MARINO

DELEGATED DECREE no. 61 of 29 March 2019

We the Captains Regent
of the Most Serene Republic of San Marino

Having regard to the obligations arising from Article 8, paragraphs 1, 2 and 5 of the Monetary Agreement between the Republic of San Marino and the European Union, signed in Brussels on 27 March 2012 and made enforceable by Parliamentary Decree no. 120 of 7 August 2012, according to which the Republic of San Marino is required to implement in particular EU legal acts and rules on banking and financial legislation, as listed in the Annex to the Monetary Agreement;
Having regard to Congress of State Decision no. 15 adopted in its sitting of 27 March 2019;
Having regard to Article 5, paragraph 3 of Constitutional Law no. 185/2005 and to Articles 8 and 10, paragraph 2 of Qualified Law no. 186/2005;
Promulgate and order the publication of the following Delegated Decree:

PROVISIONS ON MARKETS IN FINANCIAL INSTRUMENTS AND MARKET ABUSE, TRANSPOSING DIRECTIVES 2014/65/EU AND 2014/57/EU AND THEIR RELATED REGULATIONS (EU) NO. 600/2014 AND NO. 596/2014

TITLE I
GENERAL PROVISIONS

Art. 1
(Purposes)

1. In compliance with the provisions of the Monetary Agreement between the Republic of San Marino and the European Union, made enforceable by Parliamentary Decree no. 120 of 7 August 2012, this Delegated Decree shall be aimed at transposing:
a) Directive 2014/65/EU on markets in financial instruments (the so-called MiFID II) and the related Regulation (EU) no. 600/2014 (the so-called MiFIR);
b) Directive 2014/57/EU on market abuse and the related Regulation (EU) no. 596/2014, as supplemented by Implementing Directive (EU) 2015/2392 and by Delegated Regulation (EU) 2016/522.
2. In order to achieve the purposes referred to in paragraph 1, this Delegated Decree shall mainly amend Law no. 165 of 17 November 2005 (the so-called LISF), as well as the consequent updates to Law no. 96 of 29 June 2005, Decree no. 76 of 30 May 2006 and Delegated Decree no. 117 of 6 November 2006 and their subsequent amendments.

Art. 2
(Competent authority)

1. The Central Bank of the Republic of San Marino, which is already the supervisory and regulatory authority pursuant to and for the purposes of the LISF, shall be considered as competent authority also pursuant to the provisions of this Delegated Decree, without prejudice to the prerogatives of the judicial authority.
2. The Central Bank of the Republic of San Marino may therefore adopt measures, including regulatory measures, aimed at transposing the European legal acts referred to in Article 1 above and at defining their implementation-related aspects, also in coordination with the competent EU institutions, bodies and agencies.

TITLE II
AMENDMENTS TO LAW NO. 165 OF 17 NOVEMBER 2005

Art. 3
(Definitions)

1. Letter s) of paragraph 1 of Article 1 of the LISF shall be replaced as follows:
"s) "investment firm": means any company that carries out one or more activities or provides one or more of the services referred to in letter D of Annex 1;".
2. Letter z) of paragraph 1 of Article 1 of the LISF shall be replaced as follows:
"z) "regulated market": means a multilateral system operated or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments - in the system and in accordance with its non-discretionary rules - in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with the relevant European Union law and the implementing rules of the supervisory authority;".
3. Letter o) of paragraph 1 of Article 1 of the LISF shall be replaced as follows:
"o) "execution of orders on behalf of clients": means acting to conclude agreements to buy or sell one or more financial instruments on behalf of clients, including the conclusion of agreements for the subscription or sale of financial instruments issued by an investment firm or a bank at the time of their issue;".
4. Letter aa) of paragraph 1 of Article 1 of the LISF shall be replaced as follows:
"aa) "dealing on own account": means trading against proprietary capital resulting in the conclusion of purchase and sale transactions in one or more financial instruments;".
5. Letter cc) of paragraph 1 of Article 1 of the LISF shall be replaced as follows:
"cc) "financial promoter": means a natural person who, in his capacity as tied agent, professionally carries out the activity of off-site service provider referred to in Article 24;".
6. Letter hh) of paragraph 1 of Article 1 of the LISF shall be replaced as follows:
"hh) "investment services and activities": the activities and services referred to in letter D of Annex 1;".
7. The definitions contained in the following letters shall be added to paragraph 1 of Article 1 of the LISF:
"a-bis) "tied agent": means a natural or legal person who, under the full and unconditional responsibility of only one party authorised to provide investment services on whose behalf it acts, promotes investment and/or ancillary services to clients or prospective clients, receives and transmits instructions or orders from the client in respect of investment services or financial instruments, places financial instruments or provides advice to clients or prospective clients in respect of those financial instruments or services;";

“m-bis) “independent financial adviser”: means a natural or legal person who professionally carries out the activity of independent investment advice referred to in Article 25-bis;";
“m-ter) “investment advice”: means the provision of personal recommendations to a client, either upon its request or at the initiative of the service provider, in respect of one or more transactions relating to financial instruments;”;
“q-bis) “market operator”: means a company which manages or operates the business of a regulated market and may be the regulated market itself;”;
“ff-bis) “trading venues”: means a regulated market, a multilateral trading facility or an organised trading system;”;

“ff-ter) “data reporting services on transactions concluded for financial instruments on trading venues”: means the activities referred to in letter D-ter of Annex 1;”;
“kk-bis) “multilateral system”: means a system or mechanism, which enables the interaction between multiple third-party buying and selling interests in financial instruments;”;
“kk-ter) “multilateral trading facility”: means a multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments - in the system and in accordance with non-discretionary rules - in a way that results in a contract in accordance with the relevant European Union law and the implementing rules of the supervisory authority;”;
“kk-quater) “organised trading system”: means a multilateral system other than a regulated market or multilateral trading facility, which enables the interaction between multiple third-party buying and selling interests in bonds, structured financial products, emission allowances and derivatives, in a way that results in a contract in accordance with the relevant European Union law and the implementing rules of the supervisory authority;”.

Art. 4

(Investment services and activities)

1. Letter D) of Annex 1 to the LISF shall be replaced as follows:
“D) Investment services and activities.
Investment services and activities relating to one or more financial instruments shall be as follows:
D1) Reception and transmission of orders in relation to financial instruments;
D2) Execution of orders on behalf of clients in relation to financial instruments;
D3) Dealing on own account of financial instruments;
D4) Portfolio management of financial instruments;
D5) Underwriting of financial instruments or placing of financial instruments on a firm commitment basis;
D6) Placing of financial instruments without a firm commitment basis;
D7) Investment advice;
D8) Operation of multilateral trading facilities of financial instruments;
D9) Operation of organised trading systems of financial instruments.”.
2. The heading of Chapter V of Title I of Part II of the LISF shall be amended as follows: “PROVISIONS ON INVESTMENT SERVICES AND ACTIVITIES AND ON COLLECTIVE INVESTMENT SERVICES”.
3. The internal subdivision of Chapter V of Title I of Part II of the LISF shall be eliminated: “SECTION I PROVISIONS ON INVESTMENT AND COLLECTIVE INVESTMENT SERVICES”. Articles 70, 71, 72 and 73 of the LISF shall remain within Chapter V of Title I of Part II of the LISF.

4. The heading of Article 70 of the LISF shall be amended as follows: "(Investment services and activities and collective investment services)".
5. Paragraphs 1, 2 and 3 of Article 100-bis of the LISF shall be replaced as follows:
"1. The provision by authorised parties of the investment services and activities referred to in letter D of Annex 1 and of the ancillary service of safekeeping and administration of financial instruments for the account of clients shall be subject to their membership of an investor-compensation scheme.
2. The investor protection fund shall be established as the compensation scheme referred to in the preceding paragraph. The parties authorised to provide the investment services and activities referred to in letter D) of Annex 1 and the ancillary service of safekeeping and administration of financial instruments for the account of clients shall be required to become members of the investor-compensation fund, with the exclusion of branches established in the Republic of San Marino of foreign authorised parties having their registered office in a country of the European Union or in a non-EU country, which are members of an investor-compensation scheme considered equivalent by the Central Bank of the Republic of San Marino.
3. The investor-compensation fund referred to in the preceding paragraph shall be managed by the Central Bank of the Republic of San Marino and shall be an independent asset fund. The assets of the investor-compensation fund shall be autonomous and separate for all purposes from the assets of the Central Bank of the Republic of San Marino, being it subject to the regime of separation of assets.".

Art. 5
(Operation of regulated markets)

1. After letter D) of Annex 1 to the LISF, the following letter D-bis) shall be added:
"D-bis) Operation of regulated markets.
Operation of regulated markets means the establishment, operation and organisation of regulated markets.".

Art. 6
(Data reporting services on transactions concluded for financial instruments)

1. After letter D-bis) of Annex 1 to the LISF, the following letter D-ter) shall be added:
"D-ter) Data reporting services on transactions concluded for financial instruments on trading venues.
Data reporting services on transactions concluded for financial instruments on trading venues means:
a) management of an approved publication arrangement;
b) management of a consolidated publication system;
c) management of an approved reporting system.".

Art. 7
(Centralised deposit service for financial instruments)

1. After letter D-ter) of Annex 1 to the LISF, the following letter D-quater) shall be added:
"D-quater) Centralised deposit service for financial instruments.
The centralised deposit service for financial instruments shall entail the following activities:
a) Initial recording of securities in a book-entry system (notary service);
b) Providing and maintaining securities accounts at the top tier level (central maintenance service);

c) Operating a settlement system for financial instruments (settlement service).".

2. As a result of the provisions of paragraph 1, letter L-bis) of Annex 1 to the LISF shall be repealed.

Art. 8

(Financial instruments)

1. Annex 2 to the LISF shall be replaced as follows:

"ANNEX 2
FINANCIAL INSTRUMENTS

A. "Financial instruments" means:

1) transferable securities;

2) money-market instruments;

3) units in mutual funds or in collective investment undertakings;

4) options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, emission allowances or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash;

5) options, futures, swaps, forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event);

6) Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market, a multilateral trading facility or an organised trading system, except for energy derivative contracts;

7) options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in point 6 and not being for commercial purposes, which have the characteristics of other derivative financial instruments;

8) derivative instruments for the transfer of credit risk;

9) financial contracts for differences;

10) options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event), as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Section, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market, a multilateral trading facility or an organised trading system;

11) emission allowances consisting of any units recognised for compliance with the requirements of Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading.

B. "Transferable securities" means those classes of securities which are negotiable on the capital market, such as, for example:

1) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares;
2) bonds or other forms of securitised debt, including depositary receipts in respect of such securities;
3) any other securities giving the right to acquire or sell any such transferable securities referred to in points 1) and 2) above or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures.

C. "Depositary receipts" means those securities which are negotiable on the capital market and which represent ownership of the securities of a non-domiciled issuer while being able to be admitted to trading on a regulated market and traded independently of the securities of the non-domiciled issuer.

D. "Money-market instruments" means those instruments, which are normally dealt in on the money market.

E. "Derivative financial instruments" means the financial instruments referred to in letter A, points from 4) to 10), as well as the financial instruments referred to in letter B, point 3).

F. "Derivative contracts relating to commodities" means those financial instruments which are related to commodities or underlying activities referred to in letter A, points 5), 6), 7) and 10), as well as the financial instruments referred to in letter B, point 3) when they are related to commodities or underlying activities referred to in letter A, point 10).

G. "Energy derivative contracts" means options, futures, swaps, and any other derivative contracts mentioned in letter A, point 6) relating to coal or oil that are traded wholesale on an organised trading facility and must be physically settled.

H. Payment means shall not be financial instruments.".

Art. 9

(Exemptions from the authorisation regime)

1. Paragraph 1 of Article 3 of the LISF shall be replaced as follows:

"1. The exercise as a business in the Republic of San Marino of one or more activities listed in Annex 1 shall be reserved to the parties authorised for that purpose by the supervisory authority, which may, however, by its own regulation, taking into account the relevant EU law, establish simplified procedures or exemptions from the authorisation regime, in application of qualitative or quantitative thresholds.".

Art. 10

(Withdrawal of authorisation)

1. After letter d-bis) of paragraph 1 of Article 10 of the LISF, the following letter d-ter) shall be added:

"d-ter) has seriously and systematically violated the provisions governing the exercise of the reserved activity for which it was granted authorisation".

Art. 11

(Financial promotion and advice)

1. The heading of Part I of the LISF shall be amended as follows: "REGULATION OF SUPERVISED PARTIES AND ACTIVITIES".

2. The heading of Title V of Part I of the LISF shall be amended as follows: "(OTHER SUPERVISED ACTIVITIES)".

3. Chapter I of Title V of Part I of the LISF shall be amended as follows: “FINANCIAL PROMOTION AND ADVICE”.
4. After paragraph 1 of Article 25 of the LISF, the following paragraph 1-bis shall be added:
“1-bis. The activity of financial promoter shall be carried out exclusively in the interest of a single party.”.
5. Paragraph 3 of Article 25 of the LISF shall be replaced as follows:
“3. A public register of financial promoters shall be established within the supervisory authority, including a special section dedicated to the employees of the parties referred to in Article 24, paragraph 2, who provide off-site services.”.
6. After Article 25 of the LISF, the following Article 25-bis shall be added:

“Art. 25-bis
(Independent financial advisers)

1. The reserved activity referred to in letter D7 of Annex 1 shall not prejudice the possibility for natural and legal persons, who are not authorised parties, to provide investment advice for the financial instruments referred to in points 1, 2, 3 of Annex 2, as long as such advice is provided on an independent basis and without holding, not even temporarily, sums of money or financial instruments belonging to clients.
2. A public register of independent financial advisers shall be established within the supervisory authority and may also be kept in computerised form.
3. The professional exercise of the activity of investment adviser by the parties referred to in paragraph 1 shall be reserved to the parties entered in the register referred to in the preceding paragraph.
4. Independent financial advisers may also promote and provide investment advice at a place other than their address for service or registered office, provided that, when they are legal persons, they do so through their independent financial advisers.
5. Independent financial advice companies shall be jointly and severally liable for any damage caused to third parties by the independent financial advisers they use in the performance of their activity, even if such damage arises from liability proved in a criminal court.
6. The supervisory authority shall regulate the exercise of the activity referred to in paragraph 3 above, as well as, with regard to the register referred to in the second paragraph:
a) the creation, content and updating of the register;
b) the procedures and requirements, in particular as regards independence, for entry in the register;
c) the cases of suspension and removal from the register;
d) possible simplified procedures for entry in the register of parties already subject to control by foreign supervisory authorities;
e) any other aspect concerning the keeping of the register.”.
7. Paragraph 3 of Article 36 of the LISF shall be replaced as follows:
“3. The obligation of banking secrecy covering the data and information referred to in the first paragraph shall also be binding on the financial promoters referred to in Article 25, the independent financial advisers referred to in Article 25-bis and the agents and intermediaries referred to in Article 27.”.
8. Paragraph 10 of Article 36 of the LISF shall be replaced as follows:
“10. Compliance with these provisions on banking secrecy shall exempt authorised parties, financial promoters, independent financial advisers, insurance agents and intermediaries from compliance with the further provisions of Law no. 70 of 23 May 1995 and subsequent amendments protecting the confidentiality of data, including the provision of the last paragraph of Article 4.”.
9. Paragraph 2 of Article 41 of the LISF shall be replaced as follows:
“2. The powers provided for in the first paragraph may also be exercised in respect of auditors and actuaries appointed pursuant to Article 33, financial promoters, independent financial advisers, insurance and reinsurance intermediaries and parties to whom functions have been outsourced by authorised parties.”.

10. Paragraph 2 of Article 42 of the LISF shall be replaced as follows:
"2. The powers provided for in the first paragraph may also be exercised in respect of financial promoters, independent financial advisers, insurance and reinsurance intermediaries and parties to whom functions have been outsourced by authorised parties.".
11. Paragraph 1 of Article 63 of the LISF shall be replaced as follows:
"1. The products, contracts and services of authorised parties shall be advertised by meeting the requirements of accuracy of information and compliance with the content of the information documents and contractual conditions to which the products and services refer. The same principles shall also be respected when advertising is carried out autonomously by financial promoters, independent financial advisers and insurance intermediaries.".
12. Article 69 to the LISF shall be replaced as follows:

"Art. 69
(Promoters, independent financial advisers and insurance and reinsurance intermediaries)

1. In addition to authorised parties, the provisions of this Chapter shall apply, where compatible, and in accordance with the procedures laid down by the supervisory authority, also to the financial promoters referred to in Article 25, to the independent financial advisers referred to in Article 25-bis and to the insurance and reinsurance intermediaries referred to in Article 27.".
13. Paragraph 4 of Article 104 of the LISF shall be replaced as follows:
"4. In case of judicial investigations of authorised parties, financial promoters, independent financial advisers and insurance and reinsurance intermediaries, the Law Commissioner may avail himself of the collaboration of the supervisory authority.".
14. After letter b) of paragraph 2 of Article 134 of the LISF, the following letter b-bis) shall be added:
"b-bis) anyone engaged in the activity of investment adviser without being entered, where this is required, in the register indicated by Article 25-bis, paragraph 2;

Art. 12
(Financial promotion)

1. Article 24 of the LISF shall be replaced as follows:

"Art. 24
(Off-site offer of financial instruments and investment services and activities)

1. "Off-site offer of financial instruments and investment services and activities" means the promotion and placement with the public:
a) of financial instruments in a place other than the registered office or establishment of the issuer, the investment proposer or the party in charge of the promotion or placement;
b) of investment services and activities in a place other than the registered office or establishment of the party providing, promoting or placing the service or activity.
2. The supervisory authority shall regulate the off-site offer of financial instruments or investment services and activities, in particular by determining the parties which may exercise it.
3. The parties referred to in the second paragraph shall use employees or financial promoters to carry out the activity of off-site offer of financial instruments and investment services and activities.".

Art. 13

(Insurance and reinsurance intermediation)

1. Paragraph 2 of Article 26 of the LISF shall be replaced as follows:
"2. The supervisory authority shall regulate the activity of insurance and reinsurance intermediation, as well as the cases of exclusion from the scope of this Chapter and the applicable provisions concerning investment services and activities.".

Art. 14

(Implied decision of rejection)

1. Paragraph 6 of Article 38 of the LISF shall be replaced as follows:
"6. All supervisory authority's special measures, including when such measures are not adopted within the time-limits established by law, may be appealed against through judicial procedure before the Administrative Judge in the manner and according to the terms referred to in Law no. 68 of 28 June 1989 and subsequent amendments.".

Art. 15

(Powers of intervention and investigation)

1. After Article 43 of the LISF, the following Article 43-bis shall be added:

"Art. 43-bis
(*Further powers*)

1. In addition to the powers already indicated in Articles 41 and 42 above, the supervisory authority, with the prior authorisation of the judicial authority and in collaboration with the police forces, where requested by the supervisory authority, may, in the pursuit of its own purposes:
a) access any document or other data in any form, and receive or take a copy thereof;
b) require or request the provision of information to any person and, if necessary, summon and question any person in order to obtain information;
c) request existing records held by a telecommunications operator concerning the telephone communications and data exchanges of a supervised party.
2. In the exercise of its supervisory functions over the performance of the reserved activities referred to in letters D and D-bis, the supervisory authority may:
a) prohibit in advance or order the suspension, for a period not exceeding 90 days each time, of the marketing, distribution or sale of specific financial instruments where one or more of the following conditions are met:
   i. non-compliance with the relevant provisions in force;
   ii. existence of injury to investors' protection;
   iii. threat to the orderly functioning and integrity of financial or commodity markets;
   iv. threat to the stability of the financial system;
   v. negative repercussions on the price formation mechanism in the underlying market arising from financial derivative instruments;
b) order the suspension or exclusion of a financial instrument from trading on a trading venue;
c) order the temporary or permanent termination of conducts considered contrary to the provisions of this Law or of its implementing provisions.".

Art. 16
(Information documents)

1. Paragraph 2 of Article 62 of the LISF shall be replaced as follows:
"2. The information documents referred to in the first paragraph shall contain the information necessary, depending on the services or contracts offered, for the contracting parties to be able to make a well-grounded assessment of their contractual rights and obligations and all related costs and charges.".

Art. 17
(Reports to the supervisory authority)

1. After paragraph 1 of Article 68 of the LISF, the following paragraphs 1-bis, 1-ter and 1-quater shall be added:
"1-bis. In addition to reporting, in accordance with the preceding paragraph, any alleged non-compliance that is considered detrimental to their rights, anyone has the right to report to the supervisory authority any violations of the provisions of this Law or of the provisions issued by the supervisory authority.
1-ter In the cases referred to in the preceding paragraph, the supervisory authority shall ensure:
a) a safe and specific channel for such reports;
b) adequate protection of the reporting party against retaliatory, discriminatory or otherwise unfair conduct resulting from the report;
c) confidentiality of the identity of the reporting party and of the person allegedly responsible for the violation at all stages of the procedure, unless the reporting party consents or knowledge is indispensable for the defence of the reported person, without prejudice to the rules governing investigations or proceedings initiated by the judicial authority in relation to the reported facts.
1-quater. Reports made in accordance with paragraph 1-bis shall not constitute a violation of any restriction on disclosure of data or information resulting from contracts or legislative, statutory, regulatory or administrative provisions, nor of confidentiality requirements and of professional, official or banking secrecy referred to in Article 36. Reports shall not involve any liability if made in good faith.".

Art. 18
(Activity by foreign parties)

1. Paragraph 2 of Article 75 of the LISF shall be replaced as follows:
"2. The supervisory authority shall determine the cases in which the exercise by foreign parties of one or more reserved activities in the Republic of San Marino may be carried out only by setting-up a branch and not by providing services without any establishment. In case of setting-up of a branch, the provisions of Part I, Title II of this Law shall apply for the relevant authorisation.
2. Letter c) of paragraph 4 of Article 75 shall be replaced as follows:
"c) compliance in the State of origin with conditions of reciprocity or, in the absence thereof, a favourable decision by the Credit and Savings Committee (CCR) in the performance of its tasks referred to in Article 101.".

Art. 19
(Criminal sanctions)

1. Title I of Part V of the LISF shall be divided into the following two Chapters:
a) Chapter I, entitled "Market abuse";
b) Chapter II, entitled "Other illegal conducts".

2. Chapter I referred to in paragraph 1 shall contain the articles of the LISF introduced pursuant to the following Articles 20, 21, 22, 23, 24, 25 and 26. Chapter II referred to in paragraph 1 shall contain the articles of the LISF from 133 to 140-bis, including those introduced pursuant to the following Articles 27, 28 and 29.

Art. 20
(Insider dealing)

1. In Chapter I of Title I of Part V of the LISF, the following Article 132-bis shall be included:

"Art. 132-bis
(Insider dealing)

1. Third-degree imprisonment, a fine and second-degree disqualification from public offices and civil rights shall be applied to anyone who, being in possession of inside information - since he is a member of administrative, management or control bodies of the issuer, participates in the capital of the issuer, exercises a working activity, a profession or a function, including a public function, or an office, or is involved in criminal activities:
a) buys, sells or carries out other transactions, including the submission, modification or withdrawal of an offer, directly or indirectly, for his own account or for the account of third parties, for financial instruments, by fraudulently using such information;
b) fraudulently discloses such information to others outside the scope of the exercise of his employment, profession, function or office, or outside the cases where the disclosure may qualify as a market sounding;
c) fraudulently recommends or induces others, on the basis of such information, to carry out any of the transactions referred to in letter a).
2. This Article shall apply to anyone who has obtained inside information, also due to circumstances other than those indicated in the first paragraph, being aware that such information is inside information.
3. The use of the recommendation or inducement referred to in letter c) of paragraph 1 shall constitute insider dealing when the person exploiting the recommendation or inducement is aware that these are based on inside information.".
4. As a result of the provisions of the preceding paragraph, Article 305-bis of the Criminal Code shall be repealed.".

Art. 21
(Market manipulation)

1. After Article 132-bis of the LISF, the following Article 132-ter shall be added:

"Art. 132-ter
(*Market manipulation*)

1. Third-degree imprisonment, a fine and second-degree disqualification from public offices and civil rights shall be applied to anyone who fraudulently:
a) enters into a transaction, issues an order to trade or takes any action which gives, or is likely to give, false or misleading signals as to the supply of, demand for or price of a financial instrument, or which fixes, or is likely to fix, the price of one or more financial instruments at an abnormal or artificial level, unless the reasons for which the person entered into the transaction or issued an order to trade are legitimate and these transactions or orders to trade comply with accepted market practices on the trading venue concerned;

b) enters into a transaction, issues an order to trade or engages in any other activity or conduct which, through the use of fictitious devices or any other form of deception or contrivance, affects the price of one or more financial instruments;
c) disseminates information, thorough social media, which gives false or misleading signals as to the supply of, demand for or price of a financial instrument, or which secure the price of one or more financial instruments at an abnormal or artificial level, when this results in an advantage or profits for the person who disseminated the information or for others;
d) transmits false or misleading information or provides false or misleading inputs or any action which manipulates the calculation of a benchmark.".

Art. 22

(Exemption for buy-back programmes and stabilisation)

1. After Article 132-ter of the LISF, the following Article 132-quater shall be added:

"Art. 132-quater

(Exemption for buy-back programmes and stabilisation)

1. The offences referred to in Articles 132-bis and 132-ter above shall not apply to trading in own shares in buy-back programmes when all the conditions listed below are met:
a) the full details of the programme are disclosed prior to the start of trading;
b) trades are reported as being part of the buy-back programme to the competent authority and subsequently disclosed to the public;
c) adequate limits regarding price and volume are respected;
d) trading is carried out in accordance with the objectives set out in the following paragraph.
2. In order to benefit from the exemption provided for in paragraph 1, a buy-back programme shall have one or more of the following purposes:
a) to reduce the capital of an issuer;
b) to meet obligations arising from debt financial instruments that are exchangeable into equity instruments;
c) to meet obligations arising from share option programmes, or other allocations of shares, to employees or to members of the administrative, management or supervisory bodies of the issuer or of a company for which the issuer holds at least one-fifth of the votes at the ordinary shareholders' meeting or one-tenth in case of a listed company.
3. In order to benefit from the exemption provided for in paragraph 1, the issuer shall report to the competent authority each transaction relating to the buy-back programme.
4. The offences referred to in Articles 132-bis and 132-ter above shall not apply to trading in securities or associated instruments for the stabilisation of securities where:
a) stabilisation is carried out for a limited period;
b) relevant information about the stabilisation is promptly disclosed and notified to the competent authority;
c) adequate limits with regard to price are complied with.
5. For the purposes of the preceding paragraph, "securities" means:
a) shares and other securities equivalent to shares;
b) bonds and other forms of securitised debt;
c) securitised debt convertible or exchangeable into shares or into other securities equivalent to shares.".

Art. 23
(Inside information)

1. After Article 132-quater of the LISF, the following Article 132-quinquies shall be added:

"Art. 132-quinquies
(*Inside information*)

1. For the purposes of this Chapter, "inside information" means:
a) information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments;
b) in relation to commodity derivatives, information of a precise nature, which has not been made public, relating, directly or indirectly to one or more such derivatives or relating directly to the related spot commodity contract, and which, if it were made public, would be likely to have a significant effect on the prices of such derivatives or related spot commodity contracts, and where this is information which is reasonably expected to be disclosed or is required to be disclosed in accordance with the provisions in force on this matter, market rules, contract, practice or custom, on the relevant commodity derivatives markets or spot markets;
c) in relation to emission allowances or auctioned products based thereon, information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more such instruments, and which, if it were made public, would be likely to have a significant effect on the prices of such instruments or on the prices of related derivative financial instruments;
d) for persons charged with the execution of orders concerning financial instruments, it also means information conveyed by a client and relating to the client's pending orders in financial instruments, which is of a precise nature, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments, the price of related spot commodity contracts, or on the price of related derivative financial instruments.

2. For the purposes of paragraph 1, information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or which may reasonably be expected to come into existence, or an event which has occurred or which may reasonably be expected to occur, where it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of the financial instruments or the related derivative financial instrument, the related spot commodity contracts, or the auctioned products based on the emission allowances. In this respect in the case of a protracted process that is intended to bring about, or that results in, particular circumstances or a particular event, those future circumstances or that future event, and also the intermediate steps of that process which are connected with bringing about or resulting in those future circumstances or that future event, may be deemed to be precise information.

3. An intermediate step in a protracted process shall be deemed to be inside information if, by itself, it satisfies the criteria of inside information as referred to in this Article.

4. For the purposes of paragraph 1, information which, if it were made public, would be likely to have a significant effect on the prices of financial instruments, derivative financial instruments, related spot commodity contracts, or auctioned products based on emission allowances shall mean information a reasonable investor would be likely to use as part of the basis of his or her investment decisions.".

Art. 24
(Market soundings)

1. After Article 132-quinquies of the LISF, the following Article 132-sexies shall be added:

"Art. 132-sexies
(*Market soundings)*

1. For the purposes of this Chapter, a market sounding comprises the communication of information, prior to the announcement of a transaction, in order to gauge the interest of potential investors in a possible transaction and the conditions relating to it such as its potential size or pricing, to one or more potential investors by:
a) an issuer;
b) a secondary offeror of a financial instrument, in such quantity or value that the transaction is distinct from ordinary trading and involves a selling method based on the prior assessment of potential interest from potential investors;
c) an emission allowance market participant;
d) a third party acting on behalf or on the account of a person referred to in letter a), b) or c).
2. Disclosure of inside information by a person intending to make a takeover bid for the securities of a company or a merger with a company to parties entitled to the securities, shall also constitute a market sounding, provided that:
a) the information is necessary to enable the parties entitled to the securities to form an opinion on their willingness to offer their securities;
b) the willingness of parties entitled to the securities to offer their securities is reasonably required for the decision to make the takeover bid or merger.
3. A disclosing market participant shall, prior to conducting a market sounding, specifically consider whether the market sounding will involve the disclosure of inside information. The disclosing market participant shall make a written record of its conclusion and the reasons therefor. It shall provide such written records to the competent authority upon request. This obligation shall apply to each disclosure of information throughout the course of the market sounding. The disclosing market participant shall update the written records referred to in this paragraph accordingly.
4. For the purposes of Article 132-bis, disclosure of inside information made in the course of a market sounding shall be deemed to be made in the normal exercise of a person's employment, profession or duties where the disclosing market participant complies with paragraphs 3 and 5 of this Article.
5. For the purposes of paragraph 4, the disclosing market participant shall, before making the disclosure:
a) obtain the consent of the person receiving the market sounding to receive inside information;
b) inform the person receiving the market sounding that he is prohibited from using that information, or attempting to use that information, by acquiring or disposing of, for his own account or for the account of a third party, directly or indirectly, financial instruments relating to that information;
c) inform the person receiving the market sounding that he is prohibited from using that information, or attempting to use that information, by cancelling or amending an order which has already been placed concerning a financial instrument to which the information relates;
d) inform the person receiving the market sounding that by agreeing to receive the information he is obliged to keep the information confidential.

The disclosing market participant shall make and maintain a record of all information given to the person receiving the market sounding, including the information given in accordance with letters a) to d) of the first paragraph, and the identity of the potential investors to whom the information has been disclosed, including but not limited to the legal and natural persons acting on behalf of the potential investor, and the date and time of each disclosure. The disclosing market participant shall provide that record to the competent authority upon request.".

Art. 25

(Accepted market practices)

1. After Article 132-sexies of the LISF, the following Article 132-septies shall be added:

"Art. 132-septies
(*Accepted market practices*)

1. The criminal offence referred to in Article 132-ter shall not apply to the activities referred to in paragraph 1, letter a) of the same Article, provided that the person entering into a transaction, placing an order to trade or engaging in any other behaviour establishes that such transaction, order or behaviour have been carried out for legitimate reasons, and conform with an accepted market practice as established in accordance with this Article.
2. The supervisory authority may establish an accepted market practice, reviewing it at least every two years, taking into account the following criteria:
a) whether the market practice provides for a substantial level of transparency to the market;
b) whether the market practice ensures a high degree of safeguards to the operation of market forces and the proper interplay of the forces of supply and demand;
c) whether the market practice has a positive impact on market liquidity and efficiency;
d) whether the market practice takes into account the trading mechanism of the relevant market and enables market participants to react properly and in a timely manner to the new market situation created by that practice;
e) whether the market practice does not create risks for the integrity of, directly or indirectly, related markets, whether regulated or not, in the relevant financial instrument;
f) the outcome of any investigation of the relevant market practice by any competent authority or by another authority, whether the relevant market practice infringed rules or regulations designed to prevent market abuse, or codes of conduct;
g) the structural characteristics of the relevant market, whether it is regulated or not, the types of financial instruments traded and the type of market participants, including the extent of retail-investor participation in the relevant market.".

Art. 26

(Exemptions for State's economic policy)

1. After Article 132-septies of the LISF, the following Article 132-octies shall be added:

"Art. 132-octies
(*Exemptions for State's economic policy*)

1. The criminal offences referred to in this Chapter shall not apply to transactions carried out by the State for reasons related to economic policy.".

Art. 27
(Bad faith administration)

1. After Article 136 of the LISF, the following Article 136-bis shall be added:

"Art. 136-bis
(*Bad faith administration)*

1. Unless the fact constitutes a more serious crime, anyone who, in providing the service of portfolio management of financial instruments, referred to in letter D4 of Annex 1, or collective investment services, referred to in letters E and F of Annex 1, in violation of the provisions governing conflicts of interest, carries out transactions that cause damage to clients, in order to obtain undue profit for himself or for others, shall be punished with second-degree imprisonment, a fine and second-degree disqualification from holding the offices of director, holder of representative powers, internal auditor, external auditor, actuary, liquidator, special administrator in companies or other entities having legal personality.".

Art. 28
(False centralised management of financial instruments)

1. After Article 137 of the LISF, the following Article 137-bis shall be added:

"Art. 137-bis
(False centralised management of financial instruments)

1. Anyone who, in the registrations or certifications made or issued in providing the service of centralised deposit of financial instruments, referred to in letter D-quater of Annex 1, being aware of the false facts certified and with deceptive intentions, certifies false facts, of which the registration or certification is intended to prove the truth, or transfers or delivers the financial instruments or transfers the relevant rights without having obtained in return the certificates, shall be punished with first-degree imprisonment and a fine, as well as with third-degree disqualification from holding the offices of director, holder of representative powers, internal auditor, external auditor, actuary, liquidator, special administrator in companies or other entities having legal personality.".

Art. 29
(Confiscation)

1. After Article 140 of the LISF, the following Article shall be added:

"Art. 140-bis
(*Confiscation*)

1. Article 147 of the Criminal Code shall apply to the criminal offences referred to in this Title.".

TITLE III
AMENDMENTS TO DECREE NO. 76 OF 30 MAY 2006

Art. 30
(Definitions)

1. Letter k) of paragraph 1 of Article 1 of Decree no. 76 of 30 May 2006 shall be replaced as follows: "k) "investment firm": means any company that carries out one or more activities or provides one or more of the services referred to in letter D of Annex 1 to the LISF;".
2. Letter p) of paragraph 1 of Article 1 of Decree no. 76 of 30 May 2006 shall be replaced as follows: "p) "financial promoter": means any natural person who, in his capacity as tied agent, professionally carries out the activity of off-site service provider referred to in Article 24 of the LISF;".
3. After letter i) of paragraph 1 of Article 1 of Decree no. 76 of 30 May 2006, the following letter i-bis) shall be added:
"i-bis) "independent financial adviser": means a natural or legal person who professionally carries out the activity of independent investment advice referred to in Article 25-bis of the LISF;".
4. Letter q) of paragraph 1 of Article 1 of Decree no. 76 of 30 May 2006 shall be replaced as follows: "q) "investment services and activities": means the activities and services referred to in letter D of Annex 1 to the LISF;".
5. Letter d) of paragraph 2 of Article 2 of Decree no. 76 of 30 May 2006 shall be replaced as follows: "d) "investment firm", "securities company", "investment company" for investment services and activities;".
6. After Article 11 of Decree no. 76 of 30 May 2006, the following Article 11-bis shall be added:

"Art. 11-bis
(*Independent financial advisers*)

1. Independent financial advisers who fail to comply with the provisions of Part II, Title I, Chapter IV of the LISF or the provisions contained in the implementing measures issued by the Central Bank shall be punished with a pecuniary administrative sanction ranging from € 500.00 to € 15,000.00.".
7. Paragraph 1 of Article 16 of Decree no. 76 of 30 May 2006 shall be replaced as follows:
"1. Violation of the provisions contained in Articles 100 and 100-bis of the LISF and in the relevant implementing rules shall be punished with an administrative sanction ranging from € 1,000.00 to € 30,000.00.".

TITLE IV
AMENDMENTS TO LAW NO. 96 OF 29 JUNE 2005

Art. 31
(Guarantee funds)

1. Letter b of paragraph 1 of Article 33 of Law no. 96 of 29 June 2005 shall be replaced as follows: "b. the management, regulation and administration of depositor guarantee schemes and investor compensation schemes;".

TITLE V
AMENDMENTS TO DELEGATED DECREE NO. 117 OF 6 NOVEMBER 2006

Art. 32
(Supervisory charges applicable to new supervised activities)

1. After letter b) of paragraph 1 of Article 1 of Delegated Decree no. 117 of 6 November 2006, the following letter b-bis) shall be added:
"b-bis) independent financial adviser referred to in Article 25-bis of the LISF.".
2. The table in Article 3, paragraph 1 of Delegated Decree no. 117 of 6 November 2006 shall be amended as follows:

"

Activity	*Reference to Annex 1 to the LISF*	*Fixed amount*
Banking	Letter A	€ 10,000.00
Granting of credit	Letter B	€ 1,000.00
Fiduciary	Letter C	€ 1,500.00
Investment services and activities	Letter D	€ 23,000.00
of which:	Letter D1	€ 300.00
of which:	Letter D2	€ 500.00
of which:	Letter D3	€ 200.00
of which:	Letter D4	€ 1,000.00
of which:	Letter D5	€ 200.00
of which:	Letter D6	€ 300.00
of which:	Letter D7	€ 500.00
of which:	Letter D8	€ 10,000.00
of which:	Letter D9	€ 10,000.00
Operation of regulated markets	Letter D-bis	€ 15,000.00
Data reporting services on transactions concluded for financial instruments	Letter D-ter	€ 15,000.00
Centralised deposit service for financial instruments	Letter D-quater	€ 15,000.00
Traditional and non-traditional collective investment services	Letter E or F	€ 5,000.00
Insurance or reinsurance	Letter G or H	€ 15,000.00
Payment services	Letter I	€ 2,000.00
Electronic money issuing services	Letter J	€ 2,000.00
Exchange intermediation	Letter K	€ 500.00
Acquisition of shareholdings	Letter L	€ 1,500.00

.".

3. The table in paragraph 3 of Article 3 of Delegated Decree no. 117 of 6 November 2006 shall be amended as follows:
“

Parties	*Reference to the LISF*	*Fixed amount*
Natural persons: financial promoters, independent financial advisers and insurance and reinsurance intermediaries	Articles 25, 25-bis and 27	€ 200.00
Legal persons: independent financial advisers and insurance and reinsurance intermediaries	Articles 25-bis and 27	€ 500.00
Parent holding company	Art. 54	€ 1,000.00

.”.

TITLE VI
FINAL TRANSITIONAL RULES

Art. 33
(Transitional rules)

1. The parties authorised to carry out the activities referred to in letters D1, D2, D3, D4, D5, D6 of Annex 1 to Law no. 165 of 17 November 2005 shall be entitled to the authorisation to carry out the activity referred to in letter D7 of the same Annex.
2. For the exercise of one or more of the new reserved activities identified by letters D8, D9, D-bis, D-ter, D-quater, a specific authorisation shall instead be required.
3. Natural or legal persons, who, while not falling within the authorised parties pursuant to Law no. 165 of 17 November 2005, professionally exercise the activity of independent investment adviser at the date of entry into force of this Delegated Decree:
a) may continue to exercise such activity until the entry into force of the regulations on the activity, issued by the Central Bank of the Republic of San Marino pursuant to Article 25-bis, with the consequent establishment of the relevant Register;
b) shall be required to inform the Central Bank of the Republic of San Marino thereof by registered letter with acknowledgement of receipt to be sent no later than 31 July 2019.

Art. 34
(Implementing rules)

1. The provisions issued by the Central Bank of the Republic of San Marino pursuant to provisions repealed, replaced or amended by this Delegated Decree shall continue to apply until the date of entry into force of the provisions issued by the Central Bank of the Republic of San Marino pursuant to this Delegated Decree, also due to the need to align the references contained in the current regulations.

2. The provisions of this Delegated Decree, which require the adoption of implementing rules by the Central Bank of the Republic of San Marino, shall be applied in the manner and within the time-limits specified in the aforementioned rules.

Done at Our Residence, on 29 March 2019/1718 since the Foundation of the Republic

THE CAPTAINS REGENT
Mirco Tomassoni - Luca Santolini

Guerrino Zanotti
MINISTER OF INTERNAL AFFAIRS