

## ANNOUNCEMENT

The Cyprus Securities and Exchange Commission ('CySEC') would like to inform the public in relation to the issuance of a decision, on **25.9.2023**, by the Court of Appeal (Revisional Jurisdiction) has issued a decision in the Appeal No. 4/2019, **Efthymios Mpouloutas v. Cyprus Securities and Exchange Commission**.

The case concerned CySEC's decision dated 30.9.2013 to impose on Mr. Efthymios Mpouloutas an administrative fine of €100.000 for violation of article 11(2)(b) of the Insider Dealing and Market Manipulation (Market Abuse) Law ('L. 116(I)/2005') for the statement that he made on 28.9.2011 regarding Marfin Popular Bank, which was published in the magazine «Ευροκέρδος» that *"The Group is healthy, has liquidity and at this moment does not need capital, therefore any reference on issues of capital increases is not applicable"*, which was considered misleading. At the time of the statement, Mr. Mpouloutas was the chief executive officer of the group Marfin Popular Bank.

CySEC's finding that the specific statement was misleading, was based on the evidence that was presented before it, according to which Marfin Popular Bank did not have the required by the Central Bank of Cyprus liquidity and additionally, because of the liquidity problems that it faced, it was in receipt of liquidity through the emergency liquidity assistance mechanism (ELA) from the Central Bank since 27.9.2011, that constitutes the last source of funding. CySEC decided that the emergency liquidity assistance mechanism which is provided by the Central Bank, cannot be considered among the actions that a *"healthy, [which] has liquidity"* organisation takes. On the opposite, as it appears from its wording, it is an *"emergency"* mechanism and constitutes the last means to which a bank may resort for liquidity. The emergency liquidity assistance is an assistance which is provided by central banks to credit institutions which are facing liquidity problems. Therefore, Marfin Popular Bank was forced to receive emergency liquidity from the emergency liquidity assistance mechanism because of the liquidity problems that it faced.

For the decision dated 30.9.2013, the relevant CySEC's announcement dated 10.10.2013 can be found [here](#).

Mr. Mpouloutas filed an Application against the above decision of CySEC and the Administrative Court (First Instance Jurisdiction), according to its decision dated 28.11.2018, dismissed the Application as the applicant failed to establish any ground for dismissal justifying the intervention of the Court to CySEC's finding, which was deemed reasonably permissible, the result of proper investigation and fully justified.

Copy of the decision of the Administrative Court (First Instance Jurisdiction) dated 28.11.2018 can be found [here](#).

**Subsequently, Mr. Mpouloutas filed an appeal against the decision of the Administrative Court (First Instance Jurisdiction), and the Court of Appeal, according to its decision dated 25.9.2023 which was issued by majority (2 to 1), annulled as illegal the decision of CySEC dated 30.9.2013 regarding the finding of violation and the imposition of an administrative fine on Mr. Mpouloutas and set aside as erroneous the decision of the Administrative Court (First Instance Jurisdiction) dated 28.11.2018.**

According to the decision of the majority of the Court of Appeal there was insufficient justification for the conclusions of CySEC on the basis that CySEC did not balance the statement of Mr. Mpouloutas within the rest of its context and it did not justify why in its opinion, the rest of his statements, did not negate its finding as to the misleading character of the said statement.

According to the dissenting decision of the minority of the Court of Appeal, it was considered reasonable the finding of CySEC, that the reasonable rational investor would not consider the fact that the bank was in receipt of liquidity from ELA as evidence that the bank is healthy, and considered correct the finding of the Administrative Court (First Instance Jurisdiction) as to the reasonableness of CySEC's decision.

Copy of the decision of the Court of Appeal dated 25.9.2023 can be found [here](#).

Nicosia, 4 October 2023

Mk/vs