FEEDBACK STATEMENT ISSUED FURTHER TO INDUSTRY RESPONSES TO THE MFSA CONSULTATION PAPER ON THE VIRTUAL FINANCIAL ASSETS REGULATIONS TO BE ISSUED UNDER THE VIRTUAL FINANCIAL ASSETS ACT

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MFSA
MALTA FINANCIAL SERVICES AUTHORITY

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1 Introduction

On 4 July 2018, the Malta Financial Services Authority ("MFSA" or "the Authority") issued a *Consultation Paper on the Virtual Financial Assets Regulations to be issued under the Virtual Financial Services Act*. The scope of this Consultation was to obtain industry feedback with regard to the draft Virtual Financial Assets Regulations (the 'Regulations') to be issued under the Virtual Financial Assets Act ('VFAA' or 'the Act'). The Consultation period closed on the 20 July 2018 and the MFSA received 21 responses from a wide range of industry participants and interested parties.

This document summarises the Feedback Received by the MFSA with respect to the Consultation Paper and sets out the Authority's response and position thereto.

The Legal Notices have now been submitted to the minister to the Parliamentary Secretariat for Financial Services, Digital Economy and Innovation for the required approvals. Once published, the Regulations will be made available on www.mfsa.com.mt/vfa.

2 Feedback Statement

2.1 Minor Amendments

Respondents identified a number of regulations which required minor rewording in order to be made clearer and easier to understand. The MFSA has carefully considered these comments and amendments have been made to the Regulations where necessary.

2.2 Definitions

2.2.1 Customer

Feedback Received
A particular respondent commented that the use of the term customer may be confused with the term consumer and that this could have wide ranging repercussions.

MFSA Position
The Authority has carefully considered this comment. Whilst the Authority does not agree that the term customer can be confused with the term consumer, given that the term customer is indeed defined, the Authority is proposing that the term client is used throughout the Regulations since it is the term client which is applied in the principal act. The term client shall be defined as follows:

> *""client" means any natural or legal person to whom a VFA service is provided, and shall include any person whose assets are held under the control of a subject person;"*

2.2.2 Market Maker

Feedback Received
A particular respondent pointed out that the term 'market maker' should be defined.

MFSA Position
The Authority submits that the term is already defined in the Regulations as follows:

> *""market maker" means a person who holds himself out, on a continuous basis, as being willing to deal on own account by buying and selling virtual financial assets against that person's proprietary capital at prices defined by that person;"*

2.2.3 Written Consent

Feedback Received

Certain respondents commented that the concept of written consent is too restrictive for this type of business.

MFSA Position

The Authority has considered the Feedback Received and has proposed the following definition of 'written consent':

> *""written consent" means any freely given, specific, informed and unambiguous consent that is clearly evidenced in writing and affirmatively executed by signature or equivalent means of irrevocable and duly recorded, including by digital means, expression of consent."*

2.2.4 Revenue

Feedback Received

A particular respondent pointed out that the term 'revenue' as used within the Fees Schedule should be defined.

MFSA Position

The MFSA agrees that the term should be defined and has put forward the below definition:

> *""revenue" means the net revenue which shall be calculated in the following manner: the gross revenue indicated in the annual audited financial statements and that is derived from activities for which a licence was issued in terms of article 13 of the Act, less any commissions, where applicable, that are directly related to the acquisition of the said gross revenue, paid or payable to third parties;"*

2.2.5 Control of Assets

Feedback Received

A respondent highlighted that the definition of the term 'control of assets', particularly the proviso thereto was not clear in the context of Virtual Financial Assets (VFAs).

MFSA Position

In order to provide the necessary clarifications, the MFSA has included the following definition:

""control of assets" means the holding or control of assets belonging to, or on behalf of a client, by a subject person acting in the course of rendering a VFA service under the Act, and includes custody of assets:

Provided that, for the purposes of these regulations, the terms "hold", "control", "place", "safeguard" and "deposit" shall be deemed to encompass custody services provided in relation to virtual financial assets, and shall extend to any physical or digital representation of such assets or to a right to transact such assets or any physical or electronic device, keys, codes or any other information which gives the custodian control or access to such virtual financial assets, including private cryptographic keys belonging to the client;"

2.3 Exemptions

2.3.1 For Licence Holders authorised under the Investment Services Act

Feedback Received

Respondents suggested the inclusion of exemptions from licencing under the VFAA for certain persons who are already in possession of a licence under the Investment Services Act ('ISA').

MFSA Position

The MFSA has always advocated the segregation between business under the traditional financial services framework and business under the VFAA. In this respect the Authority shall be maintaining its position that only the following persons holding a licence under the ISA should be exempt from the licencing requirement under the VFAA.

1. A person licenced in terms of paragraph 5(c) of the First Schedule to the ISA to act as custodian in relation to a collective investment scheme or holding an equivalent authorisation issued by a European regulatory authority providing services in Malta in exercise of a European right, provided that such person shall solely be exempt from the provisions of the Act for the purposes of providing the VFA service listed in point (5) of the Second Schedule to the Act to a collective investment scheme;

2. A person licenced to provide the services of management of investments in terms of paragraph (4) of the First Schedule to the ISA to a collective investment scheme or holding an equivalent authorisation issued by a European regulatory authority providing services in Malta in exercise of a European right, provided that such person shall solely be exempt from the provisions of the Act for the purposes of providing the VFA services listed in points (4) and, or (6) of the Second Schedule to the Act to a collective investment scheme; and

3. Collective investment schemes licenced under the Investment Services Act or otherwise authorised by a European regulatory authority, providing services in Malta in exercise of a European right.

It should be emphasised that the exemptions mentioned in points (1) and (2) above are not automatically operative but their applicability shall be subject to the determination in writing by the MFSA.

2.3.2 For Company Services Providers

Feedback Received

A respondent suggested the inclusion of an exemption from authorisation under the VFAA for Company Services Providers ('CSPs').

MFSA Position

The MFSA considers CSPs and persons operating under the VFAA to be intrinsically different. The requirements for CSPs and persons operating under the VFAA as well as the risks inherent to such persons also differ. In this respect the Authority does not agree with the inclusion of such an exemption.

2.3.3 At the discretion of the Authority on a case by case basis

Feedback Received

A respondent suggested the inclusion of an exemption from licencing which is based on a case by case assessment of the activities to be carried out.

MFSA Position

The MFSA does not agree with such an approach on the basis that it would be conflicting with the Authority's aim of promoting legal and regulatory certainty in this sector.

2.3.4 For Issuers of VFAs which fall outside of the transitory period

Feedback Received

A respondent commented that they believe it to be imperative that a further exemption is included in the Regulations in order to cater for Initial Virtual Financial Asset Offerings which fall outside the two week period stipulated in the transitory provisions of the Act.

MFSA Position

The Authority has carefully considered this suggestion and has proposed the inclusion of an exemption as follows:

"The provisions of Article 3 of the Act shall not apply to any person who has commenced an offering in terms of article 3 prior to two weeks of the coming into force of the Act.

Provided that the exemption laid down in this regulation shall only apply to those persons whose offering will continue until not later than the 31 January 2019:

Provided further that persons whose offering will continue until later than 31 January 2019, shall, by not later than the said date, draw up a whitepaper and register it with the competent authority in terms of article 3 of the Act."

2.3.5 For a Liquidator or Curator

Feedback Received

A particular respondent sought clarification as to why reference was made to "*a liquidator or a curator in bankruptcy, acting in the course of the liquidation or bankruptcy*".

MFSA Position

The MFSA considers this exemption to be crucial as in its absence, in the event of a liquidation or bankruptcy, a liquidator or curator would require a licence.

2.3.6 Dealing on own Account Exemption

Feedback Received

A number of respondents highlighted that the dealing on own account exemption (paragraph d) – which is subject to a determination in writing by the competent authority – is impractical for natural persons.

MFSA Position

The MFSA understands that respondents' concerns relate to the applicability of an exemption for natural persons who wish to build up and manage their own VFA portfolio. In this respect such persons would be covered by paragraph (i) which reads as follows:

"a person who acts as manager, in terms of point (4) of the Second Schedule to the Act, of a portfolio which includes virtual financial assets belonging to him and to no other person, as long as:

a) such portfolio has not been established for investment purposes in the interest of other beneficiaries where such interest is legally enforceable; and
b) such portfolio does not constitute a collective investment scheme;"

2.3.7 Parent-Subsidiary Exemption

Feedback Received

Two respondents pointed out that this exemption (Regulation 3(1)(e) may be problematic as there exists a possibility of circumvention. One respondent suggested the insertion of a proviso which states that where the VFA services are provided to a parent, subsidiary or group undertaking are in turn provided to customers, it will suffice if at least one of such persons is licenced, or is otherwise exempt from licencing under the Act.

MFSA Position

The relevant exemption is clear in that it covers "*Persons which provide VFA services exclusively for their parent companies, for their subsidiaries or for other subsidiaries of their parent undertakings*" [emphasis added]. Should an entity wish to provide services to persons other than their parent, subsidiaries or for other subsidiaries of their parent undertakings, such an entity would require a licence. The MFSA therefore does not agree that the suggested proviso should be added. Furthermore, this exemption practically mirrors that provided by MiFID II under Article 2(1)(b) which exempts, in an investment services scenario, "*persons providing investment services exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertaking*".

2.3.8 For a VFA service provided in a manner incidental to a professional activity

Feedback Received

A respondent suggested that this exemption (Regulation 3(1)(j) is either deleted given that it is "practically unworkable" or else that the conditions (i) to (iii) are supplemented with additional criteria so as to provide the industry with guidance as to the expectations of the MFSA when relying upon this exemption. The respondent also stated that they are unaware of any market participants who rely upon the equivalent exemption contained in Regulation 3(1)(m) of the Investment Services Act (Exemption) Regulations.

MFSA Position

The MFSA respectfully submits that Regulation 3(1)(m) of the Investment Services Act (Exemption) Regulations transposes Article 2(1)(c) of MiFID II which provides an exemption, in an investment services scenario for "persons providing an investment service where that service is provided in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the provision of that service". Regulation 3(1)(j) which provides a similar exemption for VFA services, mirrors this MiFID article and the Authority has therefore retained the proposed wording.

2.3.9 For persons already licenced in terms of the Trusts and Trustees Act

Feedback Received

A participant to the consultation stated that an exemption should be granted to persons acting as custodians or nominees of VFA Assets who are already authorised or otherwise exempt from authorisation in terms of Articles 43 or 43A of the Trusts and Trustees Act, Chapter 331 of Laws of Malta. The respondent cited an analogous provision in the First Schedule to the Investment Services Act, Chapter 370 of the Laws of Malta.

MFSA Position

The MFSA has carefully considered the above comment and has included the following in the draft Regulations:

> *"The following persons are hereby being exempted for the purposes of the requirement for a licence for VFA services in terms of Article 13 of the Act:*
>
> *...*
>
> *a person providing custodian or nominee services in terms of point (5) of the Second Schedule to the Act who is authorised in terms of Article 43 (3) of the Trusts and Trustees Act to act as a trustee, provided that such person does not provide any other service in terms of the Second Schedule to the Act."*

It is emphasised that: [i] this exemption is not automatically operative but its applicability shall be subject to the determination in writing by the Authority; and [ii] its applicability shall not exempt such person from satisfying any regulations, rules or authorisation conditions issued by the Authority that such person must satisfy to carry out the service set out in point 5 to the Second Schedule to the Act.

2.4 VFA Licence Classes

Feedback Received

Participants commented on the proposed VFA licence classes with respect to [i] the possible addition of a VFA licence class which authorises a person to provide all VFA services; and [ii] the possibility of having a clear guidance on which licence classes can hold or control clients' monies.

MFSA Position

The MFSA has taken note of respondents' comments and the licence classes shall be revised as follows:

VFAA CLASS 1	*Licence holders authorised to receive and transmit orders and/ or provide investment advice in relation to one or more virtual financial assets and/*

or the placing of virtual financial assets. Class 1 Licence Holders are not authorised to hold or control clients' assets or money.

VFAA CLASS 2 — *Licence holders authorised to provide any VFA service but not to operate a VFA exchange or deal for their own account. Class 2 Licence Holders may hold or control clients' assets or money in conjunction with the provision of a VFA Service.*

VFAA CLASS 3 — *Licence holders authorised to provide any VFA service but not to operate a VFA exchange. Class 3 Licence Holders may hold or control clients' assets or money in conjunction with the provision of a VFA Service.*

VFAA CLASS 4 — *Licence holders authorised to provide any VFA service. Class 4 Licence Holders may hold or control clients' assets or money in conjunction with the provision of a VFA Service.*

2.5 Control of Assets

2.5.1 Concerns over the phrase "enjoys a right of ownership"

Feedback Received

One respondent raised concerns over the phrase "enjoys a right of ownership", stating that may result in legal claims from clients in the event of loss of client funds.

MFSA Position

The Authority considers the protection of clients' assets to be crucial for investor protection. Having legal certainty vis-à-vis the ownership of assets – in this case by keeping clients' ownership rights distinct from those of the subject person's – is one of way of ensuring such protection.

2.5.2 Concerns over the phrase "or to such other person as may be instructed by the customer"

Feedback Received

The proposed Regulation 11(2) provides that in the event of an insolvency or bankruptcy or related order or resolution, or in the event that the competent authority so requires, the subject person or any administrator or receiver or other officer appointed to represent it by any court or otherwise, shall on demand of any client or of the competent authority, immediately transfer the control, possession and title to all assets held by or in the name of the subject person on behalf of the client to another subject person or to such other person as may be instructed by the client or by the competent authority. A respondent pointed out that the use of the phrase "*or to such other person as may be instructed by the*

client" may be problematic given that the client may instruct that the funds are routed to "illegal parties".

MFSA Position

The above provision is solely applicable in the event of an insolvency, bankruptcy, related order or resolution, or in the event that the competent authority so requires. The Authority has to respect clients' freedom of choice when it comes to transferring assets to third parties; however, in the event that such client instructs that funds are routed to 'illegal parties', the administrator, receiver or other officer appointed to represent the firm undergoing insolvency, bankruptcy or being the subject of any related order or resolution, or MFSA order, would need to raise the matter with the appropriate authorities, prior to effecting such a transfer. The respective authorities would then take the appropriate action.

2.5.3 Disclosure to customers where obligations create security interests, liens or rights of set-off

Feedback Received

The proposed Regulations state that where a subject person is obliged to enter into agreements that create such security interests, liens or rights of set-off, it shall be required to disclose that information to clients indicating to them the risks associated with those arrangements. A respondent commented that this may be in breach of non-disclosure arrangements with counterparties.

MFSA Position

The MFSA considers such disclosure to clients to be crucial. Subject persons should keep this requirement in mind prior to entering into agreements with counterparties.

2.5.4 Duty on Documents and Tax Exemptions

Feedback Received

A respondent sought clarification on the application and applicability of the following regulation:

> *"(1) The delivery of the assets of a customer to a subject person and from a subject person to a customer or another subject person for the purpose of the control of assets in terms of these regulations shall not be deemed to constitute a chargeable transfer for the purposes of the Duty on Documents and Transfers Act and for the purposes of article 5(1) of the Income Tax Act, where the delivery of such assets does not constitute a change in the beneficial owner of the assets.*

(2) For the purpose of this regulation, beneficial owner means a person who is the real owner of, or who is otherwise beneficially entitled to, the assets held under control by the subject person, as is provided in regulation 10 of these regulations."

MFSA Position

The Authority notes that the applicability of this regulation under the VFA Regulations will mirror that of an analogous provision (Regulation 6) that exists under the Investment Services Act (Control of Assets) Regulations.

2.5.5 Segregation of Assets

Feedback Received

The Regulations require that clients' assets should be segregated in a proper manner from the assets belonging to the subject person and from the assets of other clients. Whilst one respondent suggested that different methods of segregation should be allowed, others suggested that this requirement should be removed.

MFSA Position

The Authority considers segregation to be crucial and does not agree with the removal of such a requirement. Whilst the regulation clearly states that the subject person entrusted with the control of assets belonging to clients shall, to every extent reasonably possible, segregate in a proper manner the assets of every client from the assets belonging to the subject person and from the assets of other clients, the proviso to the regulation then states that the subject person may, with the written consent of the client and in accordance with the terms and conditions of the agreement entered into with the client, the conditions of any licence and such other requirements as may be laid down by the competent authority and without prejudice to the client's right of ownership over the assets held under control, place and keep such assets in a common pool of identical assets or otherwise deposit them in a clients' or common account. In this respect, the Authority considers the regulation to be sufficiently clear in that it allows for various manners of segregation whilst at the same time safeguarding clients' rights.

2.5.6 Use of the phrase 'on a regular basis'

Feedback Received

The Regulations, as proposed, state that a subject person shall conduct, on a regular basis, reconciliations between its records and accounts and those of any third parties with whom client's virtual financial assets and money have been deposited. A respondent suggested that the phrase 'on a regular basis' should be clarified.

MFSA Position

The Regulations, as proposed, leave the regularity of such reconciliations at the discretion of the Licence Holder. The Authority will however assess whether reconciliations are indeed to be conducted on a regular basis, prior to authorising such a firm, and whether they are being conducted on a regular basis thereafter by virtue of its supervisory work. The wording of the Regulation, as proposed, will be retained.

2.5.7 Relationship with third parties

Feedback Received

The Regulations, as proposed, provide that a subject person shall take the necessary steps to ensure that any client's virtual financial assets deposited with a third party are identifiable separately from the virtual financial assets belonging to the subject person and from the virtual financial assets belonging to that third party, by means of differently titled accounts on the books of the third party or other equivalent measures that achieve the same level of protection. A respondent stated that this provision is difficult to enforce in practice.

MFSA Position

The rights of investors should be protected even when clients' assets are deposited with third parties. Subject persons should keep this requirement in mind prior to entering into any agreements with third parties.

2.5.8 Deposit of VFAs with third parties outside Malta

Feedback Received

The Regulations, as proposed state that "*A subject person may deposit virtual financial assets held by it on behalf of its customers into an account or accounts opened with a third party: Provided that such third party shall hold either a licence under this Act to provide the VFA service listed in point (5) of the second Schedule thereto or any other authorisation which is equivalent thereto issued by a European or overseas regulatory authority.*" A respondent suggested that since there are currently no ther corresponding regulatory frameworks in other European countries. In this respect the respondent stated that there should be an exemption which permits the use of unlicensed depositories.

MFSA Position

The Authority has carefully considered the above comment and shall be revising the wording of this regulation as follows:

> *"A subject person may deposit virtual financial assets held by it on behalf of its clients into an account or accounts opened with a third party:*

Provided that such third party shall:

a) hold either a licence under this Act to provide the VFA service listed in point (5) of the second Schedule thereto, or is exempt from licensing under regulation 4(1)(o); or

b) be constituted in a recognised jurisdiction, provided that the subject person shall disclose to its clients and to the Authority, the arrangements that will be put in place to ensure adequate safekeeping of assets." [1]

The above wording should allow for more flexibility whilst at the same time ensuring that clients' interests are protected.

2.5.9 Deposit of client money

Feedback Received

The proposed Regulations state that a subject person shall, on receiving any client money, promptly place such money with (a) a central bank; (b) a credit institution authorised in accordance with the provisions of Directive 2013/36/EU; (c) a bank authorised in a third country; or (d) a qualifying money market fund. Respondents highlighted that this requirement: [i] is too restrictive; [ii] places central banks in competition with credit institutions authorised in accordance with the provisions of Directive 2013/36/EU and banks authorised in third countries; [iii] should be extended to include Electronic Money Institutions and Financial Institutions; and [iv] should include banks authorised in reputable jurisdiction rather than banks authorised in a third countries. A respondent also sought a clarification as to the meaning of the term 'third country'.

MFSA Position

An analogous provision exists within the Investment Services Act (Control of Assets) Regulations – Regulation 9 – which transposes Article 4(1) of the Commission Delegated Directive (EU) 2017/593 supplementing Directive 2014/65/EU. In this respect the Authority had proposed to take the same approach taken under the traditional framework; including the exclusion of Electronic Money Institutions and Payment Institutions. The Authority has carefully reconsidered its proposal and is putting forward the following amendments:

"A subject person shall, on receiving any client money, promptly place such money with any of the following:

[1] This is the exemption from licencing under the VFAA for a person providing custodian or nominee services in terms of point (5) of the Second Schedule to the Act who is authorised in terms of Article 43 (3) of the Trusts and Trustees Act to act as a trustee, provided that such person does not provide any other service in terms of the Second Schedule to the Act.

a) a central bank;
b) a credit institution authorised in accordance with the provisions of Directive 2013/36/EU;
c) a bank authorised in a third country;
d) a money market fund;
e) an electronic money institution: or
f) a payment institution.

Provided that for purposes of points (e) and (f), such money shall only be placed with such institutions for purposes encompassed by their respective licences under the Financial Institutions Act."

With respect to the definition of the term third country, a definition shall be added to the Regulations as follows:

""third country" means a country which is not a Member State or an EEA State;"

2.6 Reporting and Audits

2.6.1 Reports on subject persons' arrangements under the Regulations

Feedback Received

Respondents highlighted that [i] internal audits should be carried out at least annually; and [ii] certification by the Malta Digital Innovation Authority should be made mandatory.

MFSA Position

The MFSA has carefully considered the respondents' comments and shall be amending the regulations as follows:

"Governance arrangements concerning the safeguarding of client assets	*(1) The subject person shall appoint a single officer of sufficient skill and authority with specific responsibility for matters relating to the compliance by the subject person with its obligations regarding the safeguarding of client assets.* *(2) The subject person shall decide whether the appointed officer is to be dedicated solely to this task or whether the officer can discharge responsibilities effectively whilst having additional responsibilities.* *(3) The appointed officer shall draw up periodic reports on compliance by the subject person with its obligations regarding*

the safeguarding of client assets. Such reports are to be provided to the subject person's board of administration.

Reports by external auditors

The subject person shall ensure that its external auditors report at least annually to the competent authority on the adequacy of the subject person's arrangements under these regulations:

Provided that this information shall form an integral part of the report which is to be submitted annually to the competent authority in terms of article 50(6) of the Act."

With respect to the requirement for certifications by a systems auditor, further detail is provided under Chapter 3 of the Virtual Financial Assets Rulebook which was issued for consultation on the 4 September 2018 (link). The final version of this chapter will be issued in the coming weeks.

2.6.2 Use of the term 'annual report'

Feedback Received

A respondent highlighted that the use of the term 'annual report' in the proviso to proposed Regulation 18 "*…this information shall form an integral part of the annual report to be submitted to the competent authority in terms of article 50(6) of the Act*" may be misleading given that it may be confused with the report containing the financial statements of the licence holder and the auditor's report therein.

MFSA Position

The MFSA acknowledges that the term 'annual report' as used in this regulation may be inaccurate. In this regard, the Authority shall be rewording regulation 18 as follows:

> *"Provided that this information shall form an integral part of the report which is to be submitted annually to the competent authority in terms of article 50(6) of the Act.""*

2.6.3 The provision of Information

Feedback Received

The proposed Regulation 19 stipulates that "*The subject person shall make information pertaining to customers' assets readily available to the following entities: (a) the competent authority; and (b) appointed insolvency practitioners.*" A respondent pointed out that external auditors should be included as an entity to whom subject persons shall be required to make information pertaining to customers' assets readily available.

MFSA Feedback

The MFSA has taken up this suggestion and shall be rewording this regulation as follows:

> *"(1) The subject person shall make information pertaining to clients' assets readily available to the following entities:*
>
> *a) the competent authority;*
> *b) an auditor appointed in terms of Article 50 of the Act; and*
> *c) appointed insolvency practitioners."*

2.7 Fees

2.7.1 Fee Structure and Supervisory Fees for Issuers

Feedback Received

Respondents commented that the fee structure proposed is too complex and should be amended. Another respondent highlighted that Issuers should not be subject to a supervisory fee.

MFSA Position

The MFSA has carefully considered Feedback Received in this regard and has decided to retain its proposal, bar the quantum of the fees (kindly refer to section 2.7.2 and 2.7.3 hereunder), given that it has been successfully used within the investment services sector. With respect to Issuers, the Authority shall be receiving certificates of compliance in relation to such issuers and therefore the levying of a supervisory fee is considered justified.

2.7.2 Quantum of Fees for VFA Agents

Feedback Received

Within its *Consultation Paper on raising the bar for VFA Agents*, issued on 4 September 2018, the Authority proposed to raise the respective application and supervisory fees for VFA Agents, in order to cover the cost of the proposed enhanced supervision of VFA Agents as follows:

TABLE 2-1: FEES APPLICABLE TO VFA AGENTS

VFA AGENT	APPLICATION FEE	SUPERVISORY FEE
Appointed in terms of Article 7 of the Act	€ 12,000	€ 12,000
Appointed in terms of Article 14 of the Act	€ 10,000	€ 10,000

TABLE 2-1: FEES APPLICABLE TO VFA AGENTS

VFA AGENT	APPLICATION FEE	SUPERVISORY FEE
Appointed in terms of both Article 7 and 14 of the Act	€ 15,000	€ 15,000

Respondents stated that raising the fees will result in higher costs for VFA Agents and in turn higher fees for clients. Participants emphasised that higher fees will not result in applicants who are more competent but rather create barriers to entry for smaller players. Respondents suggested that application fees should be lowered.

MFSA Position

With respect to application and supervisory fees, the Authority has carefully considered all Feedback Received and has decided to retain its proposal to raise such fees. These fees shall cover the cost which the Authority shall incur in order to carry out proper supervision of VFA Agents.

2.7.3 Quantum of Fees for Issuers and VFA Service Providers

Feedback Received

Certain respondents highlighted that the fees are somewhat high and merit revision.

MFSA Position

In view of the risks inherent to this sector, the Authority has re-estimated the cost to carry out proper authorisation and supervision in this field and, as a result, the fees have been increased as follows:

TABLE 2-2: FEES APPLICABLE TO ISSUERS OF VFAs

	APPLICATION FEE	SUPERVISORY FEE
WHITEPAPER REGISTRATION	€ 8,000	€ 2,000 upon the submission of the certificate of compliance

TABLE 2-3: FEES APPLICABLE TO VFA SERVICE PROVIDERS

LICENCES	APPLICATION FEE	SUPERVISORY FEE
VFAA CLASS 1	€ 6,000	**€ 5,500** for revenue up to € 50,000
		€ 700 **per tranche or part thereof** Further tranches of € 50,000 up to a maximum of € 1,000,000
VFAA CLASS 2	€ 10,000	**€ 9,000** For revenue up to € 250,000
		€ 800 **per tranche or part thereof** Further tranches of € 250,000 up to a maximum of € 5,000,000
VFAA CLASS 3	€ 14,000	**€ 12,000** For revenue up to € 250,000
		€ 800 **per tranche or part thereof** Further tranches of € 250,000 up to a maximum of € 5,000,000
VFAA CLASS 4	€ 24,000	**€ 50,000** For revenue up to € 1,000,000
		€ 5,000 **per tranche or part thereof** Further tranches of € 1,000,000 up to a maximum of € 100,000,000

3 Contact

Any comments or queries in relation to this Feedback Statement should be directed to: fintech@mfsa.com.mt.

Communications Unit
Malta Financial Services Authority
MFSA Ref: 07-2018
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MFSA

Malta Financial Services Authority