

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Circular addressed to the investment services industry regarding the application of the Investment Services Rules for Investment Services Providers in the marketing and distribution of applications to subscribe for financial instruments to be listed on the Malta Stock Exchange ('subscription application')

The MFSA would like to highlight the necessary requirements which should be adhered to by licensed investment firms. The under-mentioned scenario serves to clarify the obligations of investment firms towards their clients.

Scenario

A client (which may not necessary be a client of the investment firm) approaches an investment firm and declares his/her interest in wanting to participate in a 'subscription application'. The client would also have compiled the issuer's application form in his/her own name and would present it to the investment firm, along with the payment to the issuer. The investment firm solely acts as an intermediary to handle the application through to the issuing entity. Upon submission of the client's application form, the investment firm would receive a commission from the issuer.

Analysis

According to the First Schedule of the Investment Services Act, the definition of **reception and transmission of orders** is as follows: **"The reception from a person of an order to buy, sell or subscribe for instruments and the transmission of that order to a third party for execution"**.

The MFSA is of the view that the above referred scenario qualifies as subscription to securities in terms of the Investment Services Act. Therefore the reception of an order to subscribe to a locally issued financial instrument and the transmission of that order to the issuer is deemed to represent an investment service under the Investment Services Act. This view is reinforced by the fact that the investment firm would be in receipt of a commission from the issuer, upon submission of the client's application form.

In view of the above scenario, it is imperative that investment firms retain a record of the following documents:

- i. A copy of the compiled application form together with a record of the date and time of receipt of the application form;
- ii. A written agreement in terms of Standard Licence Conditions [SLCs] 2.38 and 2.39 of the Investment Services Rules; and
- iii. A record of the categorisation and identity of each client.

Furthermore, the investment firm would need to assess whether the financial instrument is complex or non-complex in terms of SLC 2.26 of the Investment Services Rules. If the referred financial instrument is non-complex, then the licensed entity is exempt from conducting the appropriateness test, if the conditions as stated in SLC 2.25 are met. In this case, the client would need to be provided with standardised warnings as referred in SLC 2.25 of the Investment Services Rules.

From an anti-money laundering [AML] perspective, the licensed entity would be obliged to conduct Customer Due Diligence and would be obliged to adhere to on-going obligations under the AML regulations.

Contacts

Should you have any queries regarding the above, please do not hesitate to contact: Mr. Christopher P. Buttigieg, Tel: 25485229; cbuttigieg@mfsa.com.mt ; or Ms Sara Antonia Borg, Tel: 25485451; saborg@mfsa.com.mt.

Communications Unit
Malta Financial Services Authority
27th February 2014