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MALTA FINANCIAL SERVICES AUTHORITY

Circular to the financial services industry on the Third Credit Rating Agencies Legislative Package

On the 21 May 2013, the European Parliament and the EU Council adopted the [CRA III Regulation](#) (Regulation (EU) No 462/2013) and the [CRA III Directive](#) (Directive 2013/14/EU). The new rules entered into force on 20 June 2013.

The CRA III Regulation

The objectives of the CRA III Regulation, which amends certain provisions of Regulation (EC) No 1060/2009 on credit rating agencies, are “*namely to reinforce the independence of credit rating agencies, to promote sound credit rating processes and methodologies, to mitigate the risks associated with sovereign ratings, to reduce the risk of over-reliance on credit ratings by market participants, and to ensure a right of redress for investors*”.

The MFSA is appointed under the [Financial Markets Act \(Credit Rating Agencies\) Regulations, 2014](#) (Legal Notice 479 of 2014) as the designated competent authority in Malta for the purposes of implementing the relevant provisions of the EU Regulation on credit rating agencies [[Regulation \(EC\) No 1060/2009](#)], including the new provisions arising from the CRA III Regulation.

The new Financial Markets Act (Credit Rating Agencies) Regulations, 2014 replace the Financial Markets Act (Credit Rating Agencies) Regulations, 2010 (Legal Notice 530 of 2010). A number of provisions that were found in Legal Notice 530 of 2010 have been deleted as a result of the amendments made to the EU Regulation on credit rating agencies through EU Regulation 513/2011. The latter EU Regulation has entrusted ESMA with the responsibility of directly supervising credit rating agencies.

The CRA III Directive

The CRA III Directive amends three European Directives: **[i]** Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision (IORP); **[ii]** Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS); and **[iii]** Directive 2011/61/EU on Alternative Investment Funds Managers (AIFM). The main objective of the CRA III Directive is “*namely to contribute to the reduction of the over-reliance of IORPs, UCITS and AIFs on credit ratings when making their investments.*”

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The provisions of Articles 1, 2 (2) and 3(2) of the CRA III Directive were transposed in the new Legal Notice 13 of 2015, [Over-Reliance on Credit Rating Regulations](#). These Regulations entered into force on 1 January 2015 and were issued under three primary Acts, namely the Investment Services Act, the Financial Markets Act and the Retirement Pensions Act.

The Over-reliance on Credit Rating Regulations seek to ensure that the MFSA, taking into account the nature, scale and complexity of the activities of UCITS, alternative investment Funds (AIFs) and occupational retirement schemes, shall monitor the adequacy of the credit assessment processes of the Maltese management company or the Maltese UCITS, AIFMs and occupational retirement schemes. The MFSA shall also assess the use of references to credit ratings issued by credit rating agencies in the investment policies of UCITS, AIFs and occupational retirement schemes; and, where appropriate, the MFSA shall encourage mitigation of the impact of such references to credit ratings, with a view to reducing sole and mechanistic reliance on credit ratings.

Licence holders which qualify as UCITS Management Companies and AIFMs and Malta based UCITS collective investment schemes, are required in terms of the CRA III Directive not to rely solely and mechanistically on credit ratings issued by credit rating agencies. A definition of the term 'sole or mechanistic reliance' is provided in Section III of the [Final Report on mechanistic references to credit ratings in the ESAs' guidelines and recommendations](#).

In this regard, the provisions of article 2 (1) and article 3 (1) of the CRA III Directive have been transposed in SLC 2.25 of Part B II of the Investment Services Rules for Investment Services Providers, SLC 5.26 of Part B II of the Investment Services Rules for Retail Collective Investment Schemes and SLC 2.06 of Part B III of the Investment Services Rules for Investment Services Providers.

The revisions to the Investment Services Rules for Investment Services Providers (as indicated above) are applicable as from today and may be downloaded from the Authority's website located at www.mfsa.com.mt, under the section: *Legislation & Regulation/ Regulation/ Securities and Markets/ Investment Services/ Rules for Investment Services Providers & related Guidance Notes/Part B-Standard Licence Conditions-Applicable to Licence Holders With Effect From 1 January 2014*.

The revisions to the Investment Services Rules for Retail Collective Investment Schemes (as indicated above) are also applicable as from today and may also be downloaded from the Authority's website located at www.mfsa.com.mt, under the section: *Legislation &*

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*Regulation/ Regulation/ Securities and Markets/ Collective Investment Schemes/ Rules for Retail Collective Investment Schemes/Part B-Standard Licence Conditions**.

Regulatory Technical Standards

On the 30 September 2014, the following three regulatory technical standards were published in the EU Official Journal:

- i. [Commission Delegated Regulation \(EU\) 2015/ of 30 September 2014 supplementing Regulation \(EC\) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards on disclosure requirements for structured finance instruments;](#)
- ii. [Commission Delegated Regulation \(EU\) 2015/1 of 30 September 2014 supplementing Regulation \(EC\) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards for the periodic reporting on fees charged by credit rating agencies for the purpose of ongoing supervision by the European Securities and Markets Authority;](#) and
- iii. [Commission Delegated Regulation \(EU\) 2015/2 of 30 September 2014 supplementing Regulation \(EC\) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards for the presentation of the information that credit rating agencies make available to the European Securities and Markets Authority.](#)

These three regulatory technical standards supplement the EU Regulation on credit rating agencies, providing details on the disclosure requirements for issuers, originators and sponsors on structured finance instruments; the reporting requirements for credit rating agencies on the fees charged to their clients; and the reporting requirements applicable to credit rating agencies for the purposes of the European Rating Platform.

Discussion Paper on the Use of Credit Ratings by Financial Intermediaries under Article 5(a) of the CRA Regulation

On the 23 December 2014, the Joint Committee of the European Supervisory Authorities issued a [Discussion Paper on the Use of Credit Ratings by Financial Intermediaries under Article 5\(a\) of the CRA Regulation](#). The objective of publishing this Discussion Paper is *inter alia* to allow credit institutions, investment firms, insurance undertakings, reinsurance undertakings, institutions for occupational retirement provision, management companies, investment companies, alternative investment fund managers and central counterparties to

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provide feedback to the Joint Committee on their degree of contractual reliance on credit ratings and on their recourse to alternative means of creditworthiness assessments.

ESMA will consider all comments received by **Friday 27 February 2015**.

Contacts:

Any queries in relation to the above should be addressed to the Securities and Markets Supervision Unit on su@mfsa.com.mt.

Communications Unit
Malta Financial Services Authority

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