

MFSA Newsletter

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MFSA
MALTA FINANCIAL SERVICES AUTHORITY

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MFSA Workshop - Opportunities from Regulatory Development: Widening the breadth of services offered by practitioners

The rapid development in the regulatory framework for financial services seen over the last two years led the MFSA to hold a workshop for practitioners interested in exploring the opportunities that these developments are opening up.

The workshop, held on 13th July, also provided the Authority with an opportunity to discuss the possible uses of a number of innovative features in the investment, insurance and banking frameworks. Speakers from the MFSA discussed a range of structures and instruments introduced and not, as yet,



fully applied in practice, giving the industry an insight into the objectives and key elements in these instruments. The MFSA also discussed a number of issues underpinning the authorisation process which was recently streamlined to improve efficiency and responsiveness to client needs, without detracting from its robustness.

“Innovation despite more regulation” was the theme of Prof Bannister’s presentation highlighting the relevance of the objectives set in the MFSA’s Strategic Plan 2011-2014 to the development process. The MFSA Chairman also outlined the upcoming changes in the Authority’s organisation structure including the setting up of an Enforcement Unit, the strengthening of trustee supervision, the registration of Corporate Service Providers and the creation of a Conduct of Business Board.

Prof Bannister and Dr Michael Xuereb, Director of the Regulatory Development Unit, went on to examine the rationale and key components of a number of recent initiatives including new policies regarding the assessment of applications for banking licences and developments in the investment services framework including the new Recognised Incorporated Cell Company Regulations, the application of Sharia Fund Guidelines, work being carried out on a new Alternative Company Listing platform and improvements in the structures regulating private equity funds.

Other subjects discussed were the recently launched European Wholesale Securities Market (EWSM), insurance SPVs and the MFSA’s framework agreement on the QROPS recognition for Maltese Retirement Schemes which was entered into between the MFSA and the Revenue & Customs authorities in the UK (HMRC). Prof Bannister also announced that the Maltese Inland

Revenue will also be publishing a set of Guidelines on the taxation of income derived from Pension Schemes.

This presentation was followed by Marianne Scicluna, Director of the Authorisation Unit, who delved into the issues related to the authorisation process. She explained that although the Authority is committed to a proactive approach when it comes to the authorisation of applications for licences, practitioners are reminded that the onus of providing accurate, detailed and relevant information lies with the applicants themselves. She called for the practitioners' co-operation particularly when it comes to the meticulous, sensitive and time-consuming work involved in the conduct of the due diligence process.

Prof Bannister rounded off the session by stressing that only high levels of professionalism and top quality service delivery can ensure that Malta continues to make a success of its financial services industry and avoid pitfalls in an environment that is made of numerous challenges and very stiff competition.

European Commission - New crisis management measures to avoid future bank bail-outs

Background

The on-going financial crisis clearly demonstrated that when problems hit one bank, they can quickly spread to the whole sector and well beyond the borders of any one country. Few rules existed which determined what actions could be taken by authorities in the case of a banking crisis. Furthermore, intervention by governments to prop up various banks in a number of jurisdictions cost taxpayers substantial sums of money and even put some Member States' public finances at stake. Thus, the financial crisis provided clear evidence of the need for more robust crisis management arrangements at national level, as well as the need to put in place frameworks better able to cater for cross-border banking failures. That is why the G20 agreed that a much more comprehensive crisis prevention and crisis management framework should be set up and implemented at the earliest possible opportunity. Within Europe this has now taken the shape of a proposal for a Directive establishing a framework for the recovery and resolution of credit institutions and investment firms.



Key elements of the proposed Directive:

The framework builds on recent efforts by several Member States to improve recovery and national resolution systems. It strengthens them in key respects and ensures the viability of resolution tools in Europe's integrated financial market.

Recovery

The proposed tools are divided into powers of "prevention", "early intervention" and "resolution", with intervention by the authorities becoming more intrusive as the situation deteriorates, as well as co-operation between national authorities and resolution funding.

The area of preparation and prevention deals with recovery plans, resolution plans, obstacles to resolvability and intra-group support agreements.

The section on early intervention describes early intervention powers and the appointment of a special manager.

Resolution

Resolution powers and tools are introduced so as to resolve a situation once the preventative and early intervention measures fail. Such measures are harmonised so as to ensure that all Member States have a common toolkit and roadmap to manage the failure of banks.

Cooperation

The framework also enhances cooperation between national authorities in all phases of preparation, intervention and resolution. It also lays the foundations for an increasingly integrated EU-level oversight of cross-border entities.

Resolution Funding

As regards resolution funding a certain amount of funds would be required in order for the measures provided above to be effective. Such funding will be used exclusively to support reorganisation and resolution, but not to bail out a bank. The proposed Directive caters for the establishment of a resolution fund which could be either separate from or part of currently available Deposit Compensation Scheme Funds.

The Recovery and Resolution Framework can be found on the following link: http://ec.europa.eu/internal_market/bank/crisis_management/index_en.htm

Updated Prevention of Financial Markets Abuse Guidance Notes

On the 3rd July 2012 the MFSa issued an updated version of the Prevention of Financial Markets Abuse Guidance Notes. This document has been revised to include: **[i]** the guidance provided by the MFSa to the industry by way of various circulars; and **[ii]** CESR's [now ESMA] second and third set of guidance on MAD published respectively in 2008 and 2009.

A copy of the Prevention of Financial Markets Abuse Guidance Notes is available on the [MFSa web-page](#).

For any queries on the content of the Guidance Notes, please contact the MFSa Securities and Markets Supervision Unit - su@mfsa.com.mt

ESMA's Consultation on Remuneration Guidelines for Alternative Investment Fund Managers

On 28th June 2012, ESMA published a consultation paper setting out proposed guidelines on remuneration policies applicable to Alternative Investment Fund Managers ('AIFM') [ESMA/2012/406].

The consultation paper covers the following areas: **[i]** internal governance; **[ii]** types of remuneration; **[iii]** other payments; and **[iv]** bonuses and fees.

These guidelines were issued to supplement further Article 13 and Annex II of the Directive which deal specifically with the setting up and implementation of remuneration policies. In particular Article 13(1) provides that "*AIFMs shall have remuneration policies and practices for those categories of staff, including senior management, risk takers, control functions and any employees receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers, whose professional activities have a material impact on the risk profiles of the AIFMs or of the AIFs they manage, that are consistent with and promote sound and effective risk management and do not encourage risk-taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the AIFs they manage.*" The Directive also requires ESMA to develop guidelines on sound remuneration policies to further clarify the Directive's provisions.

Given that the AIFMD remuneration requirements apply to all AIFMs which fall within the scope of the Directive, the governing body of each AIFM has to ensure sound and prudent remuneration policies and structures exist and are not improperly circumvented. Furthermore, AIFMs are required to select the type of staff for which a remuneration policy is put in place and disclose according to which criteria the staff was selected. ESMA considers that the following categories of staff must be included as Identified Staff (unless it is demonstrated that they have no material impact on the AIFM's risk profile) namely:

- 1) Members of the governing body of the AIFM;
- 2) Senior Management;
- 3) Control functions;
- 4) Staff responsible for heading the portfolio management, administration, marketing, human resources; and

5) other risk takers.

For the purposes of the guidelines, remuneration consists of all forms of payments or benefits paid by the AIFM, of any amount paid by the AIF itself, including carried interest, and of any transfer of units or shares of the AIF, in exchange for professional services rendered by the AIFM staff. All remuneration shall be divided into either fixed remuneration (payments or benefits without consideration of any performance criteria) or variable remuneration (additional payments or benefits depending on performance or, in certain cases, other contractual criteria). Both components of remuneration may include monetary payments or benefits or non-monetary benefits. Ancillary payments or benefits that are part of a general, non-discretionary, AIFM-wide policy and pose no incentive effects in terms of risk assumption can be excluded from this definition of remuneration for the purposes of the AIFMD-specific risk alignment remuneration requirements.

The consultation runs until 27 September and the consultation document is available for download from the [ESMA Website](#). It is the intention of ESMA to publish a final report before the end of 2012, so that these Guidelines will be in place well in advance of the AIFMD transposition deadline of 22 July 2013.

The MFSA encourages the industry to consider and contribute to the consultation process.

Should you have any queries, please contact the MFSA Securities and Markets Supervision Unit - su@mfsa.com.mt

ESMA issues two new Q&As on UCITS IV

On 9th July 2012, ESMA published two new Q&As on the implementation of UCITS IV. The first Q&A entitled “Notification of UCITS and exchange of information between competent authorities” aims at promoting common supervisory approaches and practices in the application of the UCITS Directive and its implementing measures. This Q&A provides for answers to questions which were raised by the industry and the competent authorities in relation to the application of the passporting provisions outlined in UCITS IV. A copy of ESMA’s Q&A is available through the following web-link: <http://www.esma.europa.eu/content/Questions-and-Answers-Notification-UCITS-and-exchange-information-between-competent-authorit>

The second Q&A entitled “Risk Measurement and Calculation of Global Exposure and Counterparty Risk for UCITS” provides answers to questions raised in relation to hedging strategies, disclosure of leverage by UCITS, concentration rules and calculation of global exposure for fund of funds. A copy of ESMA’s Q&A is available through the following web-link: <http://www.esma.europa.eu/content/Questions-and-Answers-Risk-Measurement-and-Calculation-Global-Exposure-and-Counterparty-Risk>

New legislation proposed aimed at improving the financial services sector

During the past weeks, the new legislative measures have been proposed at EU level which the financial services industry must certainly take note of:

PRIPS – UCITS V – Insurance Mediation Directive II Package

On 3rd July 2012, the European Commission presented a legislative package aimed at raising the standards and benefitting the consumers in the investments and securities sector. The package is made up of three legislative proposals namely:

1. A proposal for a regulation on key information documents for packaged retail investment products (PRIPS): This proposal, which takes the form of a Regulation, is about improving transparency in the investment market for retail investors and it will eventually be supported by Level II Implementing Measures. The proposed PRIPS Regulation together with the Implementing Measures aims at setting standards with regards to the presentation of information to retail consumers and to ensure that ultimately retail consumers receive the key information they require to make informed decisions. The provisional version is available at the following link: http://ec.europa.eu/internal_market/finances-retail/docs/investment_products/20120703-proposal_en.pdf

2. A revision of the Insurance Mediation Directive – The revised Insurance Mediation Directive aims at improving competition and creating a level playing field in the insurance markets whilst also providing European consumers with better advice on the insurance products most suited to their needs, and clear information in advance on the status of the people who sell the insurance product and the remuneration which they receive. Lastly, it also aims at introducing simplified rules on free provision and establishment of insurance services. The provisional version is available at the following link: http://ec.europa.eu/internal_market/insurance/docs/consumers/mediation/20120703-directive_en.pdf
3. A proposal for a Directive of the European Parliament and of the Council amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions: The proposal focuses on three areas namely (I) the clarification of the UCITS depositary's functions and improvements to provisions governing their liability, should assets be lost in custody; (II) the introduction of rules on remuneration policies that must be applied to key members of the UCITS managerial staff; and (III) harmonisation of the minimum administrative sanctions that are to be available to supervisors in case of key violations of the UCITS rules. The provisional version is available at the following link: http://ec.europa.eu/internal_market/investment/docs/ucits/20120703-proposal_en.pdf

New Regulation on Derivatives

On 4th July, the Council of the European Union adopted a regulation aimed at increasing transparency in derivatives and reducing risk in the over-the-counter (OTC) derivatives market. The Regulation prescribes the following requirements namely:

- a. the clearing of standardised OTC derivative contracts through central counterparties (CCPs) in order to reduce counterparty risk. This is aimed at preventing the default of one market participant causing the collapse of other market players, thereby putting the entire financial system at risk. To be authorised, a CCP will have to hold a minimum amount of financial resources.
- b. the reporting of all derivative contracts to trade repositories. Trade repositories would have to publish aggregate positions by class of derivatives, thereby offering market participants a clearer view of the derivatives market. The European Securities and Markets Authority (ESMA) will be responsible for the surveillance of trade repositories and for granting and withdrawing their registration.

Technical Standards on Short Selling Regulation

On 29th June 2012, the European Commission announced the adoption of detailed rules aimed at reducing the risk of settlement failures linked to naked short selling, as well as the means by which market participants should disclose significant short positions to the market. These technical standards, which are based on the work of ESMA, detail the manner in which ESMA is to determine which shares are exempt from the Short Selling Regulation by virtue of the fact that their principal trading venue is outside the Union. The Short Selling Regulation, together with these Technical Standards aims at creating a more transparent, orderly and stable market by reducing the risks related with short selling.

Rules on the ban on uncovered sovereign credit default swaps and short sales of shares and sovereign debt

On 5th July 2012, the European Commission adopted a Delegated Act prescribing the technical rules necessary for the uniform application and enforcement of the Short Selling Regulation. This Delegated Act specifies the cases in which sovereign credit default swaps are not considered banned by the Regulation. Other issues addressed in the Act include technical rules relating to the reporting of short positions in shares and sovereign debt, and the thresholds which can trigger a short term suspension of short selling in illiquid shares and other financial instruments.

On the same date, the European Commission also adopted a Delegated Act to supplement Regulation No. 236/2012 on short selling and certain aspects of credit default swaps with regard to regulatory technical standards for the method of calculation of the fall in value for liquid shares and other financial instruments. This Delegated Act, which is expected to apply as from 1st November 2012 is divided into 5 Articles as follows:

- a. Article 1 defines the subject matter of the delegated act.

- b. Article 2 defines the method of calculation of the fall in value for shares.
- c. Article 3 defines the method of calculation of the fall in value for other non-derivative financial instruments.
- d. Article 4 defines the method of calculation of the significant fall in value for derivatives.
- e. Article 5 provides for the date of coming into force of the proposed Regulation.

A detailed memo issued by the European Commission on the aforementioned Delegated Acts is available at the following link:

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/12/523&format=HTML&aged=0&language=EN>

Press Releases issued by the European Supervisory Authorities

European Banking Authority (EBA)

- 11 July 2012 - [EBA consults on technical standards in relation with credit valuation adjustment risk](#)
- 11 July 2012 - [Report on Risks and Vulnerabilities of the European banking sector](#)
- 11 July 2012 - [Update on the implementation of the capital exercise](#)
- 17 July 2012 - [EBA consults on technical standards on the calculation of credit risk adjustments](#)
- 20 July 2012 - [Updated list of identified Financial Conglomerates](#)
- 27 July 2012 - [EBA publishes Guidelines to streamline data collection on remuneration practices](#)
- 30 July 2012 - [Information on the deadline for the submission of the joint draft regulatory technical standards \(RTS\) on risk mitigation techniques for OTC derivatives contracts not cleared by a CCP](#)
- 31 July 2012 - [EBA workshop on technical standards on supervisory reporting requirements](#)
- 31 July 2012 - [Update on the finalisation and implementation of the standards on supervisory reporting](#)

European Securities and Markets Authority (ESMA)

- 6 July 2012 - [ESMA publishes MiFID guidelines to enhance investor protection](#)
- 24 July 2012 - [Update on measures adopted by competent authorities on short selling](#)
- 25 July 2012 - [ESMA publishes ETF guidelines and consults on repo arrangements](#)
- 26 July 2012 - [ESMA publishes review of accounting treatment of Greek sovereign debt](#)

European Insurance and Occupational Pensions Authority (EIOPA)

- 10 July 2012 - [EIOPA publishes the outcome of the public consultation on Solvency II reporting and disclosure requirements for insurers](#)
- 12 July 2012 - [EIOPA publishes the outcome of the public consultation on the ORSA](#)
- 13 July 2012 - [EIOPA hosts a meeting of the EU-US insurance dialogue](#)

Licences - June 2012

LICENCES ISSUED

Collective Investment Schemes

Professional Investor Funds targeting Qualifying Investors

- Collective Investment Scheme licences issued to **JVC Capital SICAV plc** in respect of two sub-funds.
- Collective Investment Scheme licence issued to **TRIPS SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **Brickstone Real Estate Funds SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licences issued to **World Dynamic Fund SICAV plc** in respect of three sub-funds.
- Collective Investment Scheme licence issued to **Excellence Investment Umbrella SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **Athena Capital Fund SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licences issued to **Metatron Capital SICAV plc** in respect of two sub-funds.
- Collective Investment Scheme licence issued to **Taliti Funds SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **Melita Funds SICAV Ltd** in respect of one sub-fund.

UCITS

- Collective Investment Scheme licence issued to **SphereInvest Global UCITS SICAV plc** in respect of one sub-fund

Banking

Financial Institutions

- Financial Institution licence issued to **International Transaction Payment Solutions (Malta) Limited**.
- Financial Institution licence issued to **SecureTrading Financial Services Limited**.

LICENCES SURRENDERED

Collective Investment Schemes

Professional Investor Funds targeting Qualifying Investors

- Surrender of licence issued to **Spectrum Fund (SICAV) plc** in respect of one sub-fund.
- Surrender of licence issued to **Norvik Macro SICAV plc** in respect of one sub-fund.

Foreign

- Surrender of licence issued to **Insight International Bond Funds Limited** in respect of one sub-fund.

LICENCES EXTENDED

Investment Services

- Extension of licence issued to **AUM Asset Management Limited** to provide investment advice to Professional Clients (including Collective Investment Schemes) and Eligible Counterparties.
- Extension of licence issued to **SphereInvest Group Limited** to qualify as a 'Maltese Management Company' pursuant to the Investment Services Act (Marketing of UCITS) Regulations, 2011.

Trustees & Fiduciaries

- Extension of licence issued to **Claris Trustees & Fiduciaries Limited** to include acting as an administrator of private foundations.
- Extension of licence issued to **Tri-Mer Services Limited** to include acting as an administrator of private foundations.

Registry of Companies - New Company Registrations - June 2012

Companies	Partnerships	Total
292	7	299



MFSA Notices

- 06/07/2012 - [Surrender of Licence by Swiss Investment Funds SICAV plc](#)
- 06/07/2012 - [Surrender of Licences by Invictus SICAV plc](#)
- 10/07/2012 - [Notice to Financial Services Licence Holders - FATF identifies jurisdictions with strategic deficiencies](#)
- 11/07/2012 - [Surrender of Licences by Venus Multi-Strategy Fund SICAV plc](#)
- 11/07/2012 - [Surrender of Licence by PMG Focus Funds SICAV plc](#)
- 13/07/2012 - [Listing Authority Policy - Suspension of Trading](#)
- 13/07/2012 - [Surrender of Licence by GDP Asset Management \(Malta\) Ltd](#)
- 16/07/2012 - [Surrender of Collective Investment Scheme Licence - FfM Mittelstand SICAV plc](#)
- 17/07/2012 - [EIOPA final reports on the Reporting Package and on ORSA](#)
- 20/07/2012 - [Notice to Financial Services Licence Holders - Additional US Sanctions against Iran](#)
- 25/07/2012 - [Surrender of Licences by NBCG Fund SICAV plc](#)
- 25/07/2012 - [Surrender of Licences by Innocap Fund SICAV plc](#)
- 30/07/2012 - [Surrender of Licences by NBCG Fund SICAV plc](#)





MFSa Circulars

16/07/2012 - [Circular addressed to Category 2 and 3 Investment Services Licence Holders regarding the Automatic Execution of Trade Signals](#)

24/07/2012 - [Circular addressed to the investment services industry regarding amendments to the Investment Services Rules for Investment Service providers](#)



Warnings

MFSa warnings and Foreign warnings received by MFSa can be viewed on the [MFSa Website](#).



Forthcoming Events



Details of Malta International Training Centre (MITC) training programmes' are available on the [MITC Website](#).

Issued by the Communications Unit, Malta Financial Services Authority, e-mail: communications@mfsa.com.mt

MFSa

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