

MFSA Newsletter

February 2014

MFSA
MALTA FINANCIAL SERVICES AUTHORITY

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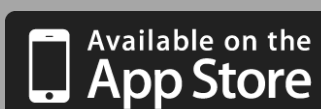
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Seminar on Effective Oversight of Capital Markets



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The Second Edition of the Seminar on Effective Oversight of Capital Markets was held in Malta between the 24th and 27th February, organised jointly by the Malta Financial Services Authority and United States Securities & Exchange Commission. This years' programme provided a dynamic forum where speakers and delegates from over 20 different international jurisdictions explored objectives and philosophies that promote investor protection and integrity of the capital markets.

The topics covered during this years' programme focused on balanced, proven, and pragmatic techniques for the oversight and inspection of market participants, conducting investigations, and bringing effective enforcement actions, with particular emphasis on broker dealers, investment advisers, investment companies, mutual funds, hedge funds, and private equity funds.

The different sessions sought to provide delegates with a greater understanding of these topics from the point of view of Speakers with years of private and public sector experience, including demonstrated expertise in their fields. Four top

experts from the SEC's Division of Investment Management, Office of Compliance Inspections and Examinations, and Office of International Affairs delivered in-depth presentations, consistent with international best practices, which could be adapted for effective use internationally.

The major themes discussed during the four-day event, ranging from cross-border training to financial fraud, from money laundering to remedies and sanctions all serve principally the final goal of building an effective compliance and examination programme and risk based supervision. This discussion included cultivating a culture of compliance in the industry and best practices in structuring an examination program for broker-dealers, investment advisers and other market licensees and registrants.



Participants at the Seminar on Effective Oversight of Capital Markets

Participants discussed and exchanged ideas on how to deal with complaints, tips and referrals, and how this information can inform both a risk based examination program and enforcement priorities.

Discussions also focused on the internationalization of the world's securities markets and the increased frequency of cross-border trading activity, which today have created a more challenging enforcement environment. Frequently, investigating and prosecuting securities law violations in one country requires gathering information located outside that country.

Therefore, it is of critical importance for securities regulators around the world to cooperate in providing access to information necessary for the prevention, detection and prosecution of securities law violations. Different American and international enforcement efforts and techniques were discussed, as well as the IOSCO Multilateral Memorandum of Understanding.

Financial Fraud was also covered in this year's Conference, with an emphasis on the basic legal requirements governing financial reporting; the sources from which these investigations arise; the common types of financial fraud schemes; the documents that should be obtained and reviewed from the company and the company's auditor; the individuals who should be called to testify; the concept and value of "credit for cooperation" in the context of such cases; and appropriate sanctions to address such conduct. Moreover, specific sessions also discussed tools for investigating and prosecuting market manipulation cases, including fraudulent "pump and dump" schemes.

Appropriate Remedies and Sanctions for Securities Law Violations were also covered, with discussion tackling the range of civil and administrative sanctions and remedies available to the SEC to combat securities law violations. Disgorgement, civil penalties and industry bars were discussed amongst other remedies, while participants also considered concepts and strategies in settling enforcement cases, credit for cooperation and managing enforcement resources.

Besides the technical sessions, this Conference served as a very important networking event between high officials of regulators from worldwide jurisdictions, and a valuable learning experience for a number of MFSA officials who participated in the event.

ESRB Recommendation on Funding of Credit Institutions



Recommendation ESRB/2012/2 on funding of credit institutions was published by the European Systemic Risk Board early last year and is currently in the implementation phase.

The Recommendation is based on studies that show that bank funding structures have undergone significant change in recent years. The most notable development has been the increase in the relative importance of secured funding as a consequence of investors' risk aversion and of regulatory developments, notably the Basel frameworks for capital and liquidity and Solvency II. These developments have set the scene for rising demand for collateral (including from public sector funding sources) with a tightening supply of quality collateral, at a time when banks need stable funding sources to maintain their lending into the real economy. An analysis of market conditions undertaken by the ESRB has identified a number of specific risks related to these developments as requiring attention in view of their systemic, or potentially systemic, nature. These risks relate to (1) overall funding structures, particularly those relying on innovative and deposit-like products sold to retail customers, and the execution of funding plans; (2) asset encumbrance; and (3) covered bonds and other instruments that generate encumbrance.

In the short run, given the still impaired market conditions and credit institutions' need to develop robust funding plans, national supervisory authorities (NSAs) will be monitoring and assessing funding and liquidity risks and the viability of funding plans, on an aggregate basis, at national level. Similar monitoring will be carried out by the European Banking Authority (EBA) at an EU level.

These authorities will, in particular, be assessing credit institutions' plans to reduce reliance on public sector funding sources as well as any systemic risks that may arise from the use innovative and uninsured deposit-like instruments sold to retail customers, and their possible negative effects on traditional deposits.

A key thrust of the recommendation is to address issues of encumbrance by means of a comprehensive strategy to further improve credit institutions' management of liquidity and funding risks where encumbrance is involved.

This article provides an overview of the various sub-recommendations as well as main deliverables under the relevant supervisory processes.

Recommendation A: Monitoring and assessment of funding risks and funding risk management by supervisors

The analysis of credit institutions' funding plans, on aggregate, makes it possible to assess their coherence and feasibility, while taking into account the likely evolution of funding markets. The main aim of this recommendation is to gain an overall picture of funding needs, funding capacity and, the viability of funding plans, both at national and Union levels. This type of enhanced monitoring and assessment would also highlight potential risks stemming from innovative instruments and instruments sold in the retail market.

The European Banking Authority is currently consulting on the issue of guidelines on harmonized definitions and templates for funding plans of credit institutions (EBA Draft Guidelines). The draft templates in spreadsheet format contain harmonized definitions of the data items to be reported by institutions to their competent authorities and from the latter to the EBA.

The templates and definitions will assist competent authorities to assess the feasibility of funding plans and their impact on the supply of credit to the real economy as well as enable the EBA to discharge its duty to coordinate the assessment of funding plans at Union level. The templates based on annual data have been designed to analyse credit institutions' strategies to meet their expected funding needs based on their 3-year forward-looking business strategies.

Credit Institutions will be requested to provide a projection of selected balance sheet items focused on lending, deposits and wholesale funding. The aim is to obtain a general overview of planned balance-sheet developments.

Recommendation B: Risk management of asset encumbrance by institutions

This recommendation aims at providing a harmonised measure of asset encumbrance across institutions, which will allow supervisory authorities to compare the reliance on secured funding and the degree of structural subordination of unsecured creditors and depositors across institutions. It will also allow supervisors to assess the ability of institutions to handle funding stress, by providing an assessment of the ability of switching to secured funding. The requirements of this recommendation may also be incorporated into future crisis management actions, as it will allow for an assessment of the assets available in a resolution situation.

Recommendation C: Monitoring of asset encumbrance by supervisors

This recommendation requires that credit institutions be made aware of their encumbrance levels and required to devise a comprehensive monitoring framework. Institutions can better cope with stress situations if they have the ability to monitor and control risks on the basis of regular, good quality information. A consultation paper issued by the EBA last year includes draft set of Implementing Technical Standards (ITS) to be used in complying with the ESRB Recommendation.

Recommendation D: Market Transparency on asset encumbrance

The EBA will also be developing guidelines on transparency requirements for credit institutions related to the level and evolution of encumbered and unencumbered assets. In view of the limited experience in disclosing reliable and meaningful information on asset quality, the EBA will be following a gradual approach, with a view to moving to a more extensive disclosure regime after a year.

Recommendation E: Covered Bonds and other instruments that generate encumbrance

Considering the relative importance that covered bonds have assumed in banks' funding structures and the risks identified in these instruments, for instance in terms of legal uncertainties in some Member States and differences in disclosure habits, national supervisory authorities are encouraged to promote the adoption of best practices in this area. There is no intention, however, to set Europe-wide limits for the issuance of covered bonds although the EBA may consider whether to issue guidelines or recommendations endorsing best practices.

The MFSA is currently reviewing the supervisory processes involved within the recommendations on funding of credit institutions and will be issuing further information in due course. Credit institutions are urged to familiarize themselves with the provisions of the ESRB Recommendation and in particular with the issues identified in the Annex thereto.

The Recommendation and Annex may be found at the following links: <http://goo.gl/gNlx4c> and <http://goo.gl/sGioUy>

Deadline looming for Company Service Providers' Registration

Following the entry into force of the Company Service Providers Act, 2013, the Authority has issued its draft Rules for Company Service Providers. Persons who are currently providing company services within the meaning of the Company Service providers Act have until the 24th March, 2014 to submit an application to the Authority for registration as a company service provider.

In preparation for this important development, the MFSA organised a seminar with the purpose to update the industry with the proposed regulatory requirements for Company Service Providers.

Included within the definition of a Company Service Providers are any natural or legal person resident or operating in or from Malta who, by way of business, provide formation of companies or other legal entities; acting or arranging for a person to act as director or secretary of a company, a partner in a partnership or in a similar position in relation to other legal entities; and providing registered office facilities and other related services for a company, partnership or other legal entity.

Introducing the Seminar, Dr Michelle Mizzi Buontempo explained that such requirement will cover all entities providing such services by way of business, which implies any person who holds himself out as providing company services or provides company services on a regular and habitual basis and is directly or indirectly in receipt of remuneration for the provision of such services.

Factors which could be taken into consideration include the amount of time taken to fulfil responsibility is significant; that the individual has no other employment; the level of income received (in so far as quantum and as a proportion of individuals' total income) is significant; the existence of a business relationship through which habitual or frequent or regular appointments are introduced; that the person offering/providing more than one type of company service and that turnover of engagements is significant.

Any person currently acting as a CSP or who intends providing, by way of business, any of the services that fall within the definition of a CSP needs to submit an application to the MFSA to obtain registration. This requirement is a result of Directive 2005/60/EC which requires company service providers to be licensed or registered EU Member States required to ensure that persons who effectively direct of such entities as well as beneficial owners of such entities are fit and proper.

The conditions for registration purposes include that the person must be resident or operating in Malta; if company services are provided by a natural person, that individual must be fit and proper, while if company services are provided by a limited liability company, the directors, as well as every person who directly or indirectly owns or controls 25% or more of the shares or voting rights, must be fit and proper; objects clause must not include activities which are incompatible with the services of a company service provider.

Any person acting as company service provider upon coming into force of Act regulating CSPs needs to apply for registration with the MFSA within three months – by not later than 24 March 2014.

The MFSA undertakes to process applications within six months from receipt of a complete application, including supporting documentation.

Educational Clinic on the European Markets Infrastructure Regulation

On Thursday 20th February, 2014, FinanceMalta in collaboration with the MFSA, organised an educational clinic on the European Markets Infrastructure Regulation ('EMIR'). The educational clinic allowed a fully booked conference hall to hear first-hand from the European Securities and Markets Authority ('ESMA') and the MFSA, about the developments on EMIR, and also allowed them with a unique opportunity to get an understanding of the impact of this regulation both locally and across Europe.

The speakers included Mr Edward Grech from the MFSA who explained EMIR's general framework, Mr Simon Turek from ESMA who provided an update on EU developments relating to EMIR particularly with respect to the forthcoming clearing obligation, and Mr Nathan Fenech who provided an explanation of the implementation of EMIR in Malta.

There was also a panel chaired by Mr Christopher P. Buttigieg from the MFSA which comprised of members from the industry including HSBC Bank Malta plc, Bank of Valletta plc, Active Group Malta, Pricewaterhouse Coopers Malta and the Malta Stock Exchange. Discussions on this panel focused on the implementation of EMIR from an industry perspective.

Industry Update – UCITS

On the 25 February 2014, the European Parliament and the Council backed the European Commission's proposal of July 2012 for a directive amending the UCITS Directive (2009/65/EC) with the aim of strengthening the protection of investors. The key elements of the agreement reached by the co-legislators are as follows:

UCITS V strengthens the rules on eligible entities that can act as a depositary. Only national central banks, credit institutions and regulated firms with sufficient capital and adequate infrastructure will be eligible as UCITS depositaries and will hold for safe-keeping all UCITS assets.

UCITS assets will be protected in the event of insolvency of the depositary through clear segregation rules and safeguards provided by the insolvency law of the Member States.

The depositary's liability has been strengthened. The depositary will be liable for any loss of UCITS assets held in custody. The UCITS investors will always have the right of redress directly against the depositary and will not have to rely on the management company's ability to accomplish this task.

Remuneration policies for all risk takers involved in managing UCITS funds have been introduced so that remuneration practices do not encourage excessive risk-taking and instead promote sound and effective risk management. The transparency of the remuneration practices will be enhanced. The remuneration policies are in line with those in the Alternative Investment Fund Managers Directive (2011/61/EC).

The agreement strengthens the existing regime to ensure effective and harmonised administrative sanctions. The use of criminal sanctions is framed so as to ensure the cooperation between authorities and the transparency of sanctions. A harmonised system of strengthened cooperation will improve the effective detection of breaches of UCITS rules.

Should you have any queries with respect to the above, kindly contact Mr Christopher Buttigieg on CButtigieg@mfsa.com.mt or Mr Jonathan Sammut on jsammut@mfsa.com.mt or the undersigned.

European Supervisory Authorities Press Releases issued during February 2014

European Central Bank



07/02/2014 - [ECB launches public consultation on the draft ECB SSM Framework Regulation](#)

03/02/2014 - [ECB makes progress with asset quality review, and confirms stress test parameters for comprehensive assessment](#)

European Securities and Markets Authority (ESMA)



24/02/2014 - [ESMA launches one-stop shop for EU regulated investment information](#)

21/02/2014 - [ESMA - Credit Rating Agencies Annual Report 2013](#)

17/02/2014 - [ESMA Q&A on AIFMD](#)

14/02/2014 - [ESMA - Letter to Commissioner Barnier on classification of financial instruments as derivatives](#)

11/02/2014 - [ESMA - Updated Q&A on EMIR, with additional details on trade reporting.](#)

11/02/2014 - [ESMA Press Release: Consultation on CRA transparency requirements](#)

07/02/2014 - [ESMA tells firms to improve their selling practices for complex financial products](#)

07/02/2014 - [EBA, ESMA and EIOPA publish final Report on mechanistic references to credit ratings in the ESAs' guidelines and recommendations](#)

European Banking Authority (EBA)



05/02/2014 - [EBA consultation on draft technical standards on the mapping of ECAI's credit assessments](#)

MFSA Licences - January 2014

LICENCES ISSUED

Banking

Credit Institutions

- Credit Institution licence issued to **Pilatus Bank Limited**.

Financial Institutions

- Financial Institution licence issued to **Heinz-Glas Financial Services Malta Limited**.

COLLECTIVE INVESTMENT SCHEMES

Professional Investor Funds targeting Qualifying Investors

- Collective Investment Scheme licences issued to **Himalaya SICAV plc** in respect of two sub-funds.
- Collective Investment Scheme licence issued to **Knights of Malta Investment Funds SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licences issued to **CAM Fund Series SICAV plc** in respect of two sub-funds.
- Collective Investment Scheme licence issued to **TGA Funds SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **Innocap Fund SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **NBCG Fund SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **Global Market Neutral Strategies SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **FK Capital Management SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **Cygnus SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **Cygnus Master SICAV Limited** in respect of one sub-fund.

Insurance

Insurance Undertakings

- Licence issued to **White Rock Insurance (Netherlands) PCC Ltd** to carry on business of affiliated insurance and reinsurance in 17 classes of the general business.

Cells

- Approval of **Finance One Cell** as a cell of **Abbey International Insurance PCC Ltd** to carry on business of insurance in one class of the general business.
- Approval of **Oxford International Financial Management** as a cell of **Jatco Insurance Brokers PCC Ltd** to carry out insurance intermediaries activities.

SURRENDERED LICENCES**Collective Investment Schemes***Professional Investor Funds targeting Qualifying Investors*

- Surrender of licence issued to **Blue Umbrella Funds SICAV plc**.
- Surrender of licences issued to **Innocap Fund SICAV plc** in respect of nine sub-funds.
- Surrender of licences issued to **NBCG Fund SICAV Plc** in respect of 11 sub-funds.
- Surrender of licence issued to **Aladdin Umbrella Fund SICAV plc**.

Investment Services

- Surrender of Category 2 licence issued to **Clive Capital (Malta) Limited**.

Insurance*Insurance Undertakings*

- Surrender of licence issued to **Shield Insurance Company Ltd**.

EXTENDED LICENSES**Banking***Credit Institutions*

- Extension of licence issued to **Ferratum Bank Limited** to carry out Activity 4 - Guarantees and Commitments as listed in the Schedule to the Act.

Financial Institutions

- Extension of licence issued to **Insignia Cards Limited** to carry out Activity 1 as listed in Schedule 1 of the Financial Institutions Act which refers to the provision of lending facilities.

Registry of Companies - New Registrations - January 2014

| Companies | Partnerships | Total |
|-----------|--------------|-------|
| 341 | 4 | 345 |

MFSA Announcements



MFSA Circulars

- 04/02/2014 - [Circular to the financial services industry on the ESMA Guidelines on Remuneration Policies and Practices \(MiFID\)](#)
- 04/02/2014 - [Publication of new Rules which transpose the Fourth Capital Requirements Directive \(CRD IV\) and implement the Capital Requirements Regulation \(CRR\)](#)
- 06/02/2014 - [Explanatory Note on the interpretation of limits applicable to cross sub-fund investments](#)
- 14/02/2014 - [Circular to the financial services industry on the Alternative Investment Fund Managers Directive \('AIFMD'\)](#)
- 18/02/2014 - [Circular to the financial services industry on the Alternative Investment Fund Managers Directive \('AIFMD'\)](#)
- 28/02/2014 - [Circular regarding 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](#)
- 28/02/2014 - [Notice to Financial Services Licence Holders - FATF identifies jurisdictions with strategic deficiencies](#)



MFSA Media Releases

- 20/02/2014 - [Update to investors who hold investments in ARM Asset Backed Securities S.A.](#)



Warnings

- 19/02/2014 - [Warning against ABFX Ltd or ABFX Inc. – http://www.alphabetafx.com/](http://www.alphabetafx.com/)
- 21/02/2014 - [Warning against Merex Markets – http://www.merexmarkets.com/merex/](http://www.merexmarkets.com/merex/)



MFSA Listing Authority Announcements

- 07/02/2014 - [Extension of period of Suspension of public offer - A25 Gold Producers Corp](#)
- 24/02/2014 - [Extension of period of Suspension of public offer - A25 Gold Producers Corp](#)



Forthcoming Events

06-07/03/2014 - [STEP Malta Conference 2014](#)

10/04/2014 - [Commercial Risk Europe Seminar \(in association with IFSP\)](#)



12-13/02/2014 - [Malta International Risk & Insurance Congress 2014](#)



Education Consultative Council (ECC)

Training by members of the ECC:

- [Malta International Training Centre](#)
- [Malta Institute of Accountants](#)
- [Institute of Financial Services](#)



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Notabile Road, Attard BKR 3000, Malta

Phone: +356 21 44 11 55; Fax: +356 21 44 11 89

www.mfsa.com.mt registry.mfsa.com.mt mymoneybox.mfsa.com.mt www.careersinfinance.mfsa.com.mt

