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### Malta forum examines new developments in financial crime and its prevention

With the global economy 'drowning' in corporate fraud (according to a recent report from the Earth Institute at Columbia University), the timing of the 2011 Malta International Financial Crime Forum couldn't have been more appropriate.

Around 60 delegates from Malta and around the world gathered last month to be brought up-to-date and 'put in the picture' by a number of speakers drawn from the many different disciplines of academia, law, accounting and law enforcement at a two-day event held in the Conference Suite of the Hilton Hotel.

The event, organised by the ICC's Financial Investigation Bureau (FIB), together with the Malta Financial Services Authority (MFSA) and Malta Financial Intelligence Analysis Unit (FIAU) provided a timely opportunity debate recent trends with specialists in their field and to network about the risks and threats currently facing financial institutions.

In a packed programme, delegates were told what are set to become the big issues they may expect to have to tackle and about the shift in the burden of risk to intermediaries. They heard about the situation in Malta and what is being proposed to deal with it; specifically some bold steps towards the electronic verification of documents. They learned the details of some new cases of trade and investment frauds, and were treated to an in-depth look at the Ponzi fraud phenomenon and how, and how not, to go about its investigation. And they were treated to a detailed account of how drug money laundering works in the US and law enforcement's pro-active ways of seizing its assets, which carried a warning to expect similar techniques to reach Europe soon.

Later, there was a look at how criminals use and abuse offshore locations to wash their profits, and details of forensic accounting techniques to detect insider fraud. Delegates were also told about some of the games banks play to keep the regulators on-side and off balance, and were reminded of the potential problems they face over decisions about whether and when to report suspicious transac-

tions. The issues in Italy where there is no bank secrecy law were highlighted, as was the implication of increased regulatory enforcement on just about every financial institution today.

Delegates left with a better understanding of the challenges they face, both from financial criminals and from a regulatory system that increasingly seeks to control their ability to do business. If nothing else, they are now more aware than ever that current measures to detect and prevent financial crime are failing in their efforts to bring it down. If the world is indeed 'drowning' in fraud, it is the so-called 'developed' nations and those with supposedly the best governance where the problems are most obvious, and from where new solutions must come. The delegates to the 2011 Malta International Financial Crime Forum are now better placed than many to appreciate the risks, understand the challenges, and begin the protection process.



*Participants at the 2011 Malta International Financial Crime Forum*

"It was an enlightening few days," says Pottengal Mukundan, Director ICC Commercial Crime Services and the Forum Chairman. "The immediate feedback from delegates was very positive, and they welcomed our initiative. We had great support from the FIAU and MFSA and I believe this format is something that financial institutions and other similar authorities can benefit from."

"These are interesting times and there is no doubt this is a difficult environment in which to conduct business. The FIB is seeing an increase in many different types of financial fraud being reported all over the world, and the evidence suggests fraudsters are increasingly sharing information about their techniques and their victims. It's clear that everyone invested in fraud detection and prevention will need to do the same or be at a disadvantage. The Forum proved to be a useful tool to do this," he added.

*This article was first published in Commercial Crime International, published by Commercial Crime Services, a sub-division of the International Chamber of Commerce, June 2011*

## Publication of the Consumer Complaints Unit Annual Report for 2010

The Malta Financial Services Authority (MFSA) has in May published the Consumer Complaints Unit Annual Report for 2010.

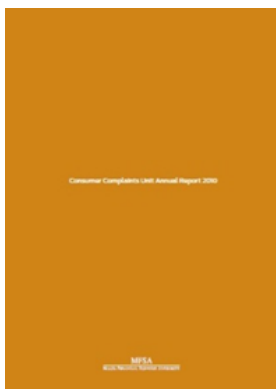
In his forward statement to the report, Professor Joe Bannister, MFSA chairman, remarks that although the Authority has contributed substantially towards increasing consumer awareness about financial services, it is very much aware that consumer education in this field has to be improved especially because of information asymmetry and misconceptions about consumers' rights and obligations. Prof Bannister states that the Consumer Complaints Unit is obliged to deal with all complaints expeditiously without prejudicing the other parties' rights to a fair and due process.

The Consumer Affairs Unit is empowered by law to investigate complaints from private individuals relating to any financial services transaction in a fair and impartial manner. The Unit is also responsible for providing consumer education and information about financial services and to answer queries from the public on financial services matters in general.

During the year, the Unit received 172 formal complaints and 188 verbal complaints. A total of 149 cases were reviewed and concluded, which include a number of cases received in 2009. The Unit responded to over 600 queries from the general public on general financial services matters.

The Unit has been very active in the broadcasting media which is considered to be an important platform through which consumers are educated on various matters relating to financial services.

The consumer portal "MyMoneyBox" has proved to be a key website providing impartial information to consumers about financial products and services. Statistically, the most accessed section of the portal is the online database of tariffs and charges levied on a number of financial products and services. The Unit will in the near future be widening the scope of the online database by including comparative features of available specific financial products. A monthly electronic newsletter is also sent to subscribers of the portal. The site is updated regularly and new information is added on a monthly basis.



The Annual Report summarises a selection of important cases dealt with by the Unit in the year under review. The aim is to show the diversity and complexity of the cases the Unit has received and investigated.

The Annual Report may be downloaded from the [MFSA Website](#).

## Consultation - UCITS IV

Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulation and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS IV) was approved by the European Parliament in January 2009 and is planned to come into force throughout the EU Member States on 1<sup>st</sup> July 2011.

Directive 2009/65/EC is further supplemented by the following Level II and Level III Implementing Measures:

### Level II Implementing Measures

- i. Commission Directive 2010/42/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards certain provisions concerning fund mergers, master-feeder structures and notification procedure;
- ii. Commission Directive 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company;
- iii. Commission Regulation (EU) No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website; and
- iv. Commission Regulation (EU) No 584/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards the form and content of the standard notification letter and UCITS attestation, the use of electronic communication between competent authorities for the purpose of notification, and procedures for on-the-spot verifications and investigations and the exchange of information between competent authorities.

### Level III Implementing Measures

- i. Guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS [CESR/10-788]
- ii. Guidelines to competent authorities and UCITS management companies on risk measurement and the calculation of global exposure for certain types of structured UCITS [ESMA/2011/112];
- iii. Template for the Key Investor Information Document [CESR/10-1321];
- iv. Guide to clear language and layout for the Key Investor Information Document [CESR/10-1320];
- v. Guidelines on the Transition from the Simplified Prospectus to the Key Investor Information Document [CESR/10-1319];
- vi. Guidelines on the Selection and presentation of performance scenarios in the Key Investor Information Document (KII) for structured UCITS [CESR/10-1318];
- vii. Guidelines on the methodology for calculation of the ongoing charges figure in the Key Investor Information Document [CESR/10-674];
- viii. Guidelines on the methodology for the calculation of the synthetic risk and reward indicator in the Key Investor Information Document [CESR/10-673].

### UCITS IV and Maltese Law

#### Issue of Legal Notices

On 5<sup>th</sup> May 2011, the Authority issued for consultation three Legal Notices transposing certain requirements of the UCITS IV Directive. The three Legal Notices in question were the following:

- i. Investment Services Act (Marketing of UCITS) Regulations, 2011;
- ii. Investment Services Act (UCITS Management Company Passport) Regulations, 2011; and
- iii. Investment Services Act (UCITS Mergers) Regulations, 2011.

The Investment Services Act (Market of UCITS) Regulations, 2011 outline the procedures applicable to Maltese UCITS wishing to market their units in other EU or EEA Member States and by European UCITS which wish to market their units to investors in Malta. The Regulations further establish the information requirements which should be provided by Maltese UCITS or European UCITS to their respective investor and stipulate which regulatory authority has jurisdiction in the case of UCITS which are marketing units on a cross-border basis.

The Investment Services Act (UCITS Management Compa-

ny Passport) Regulations, 2011 outline the procedure relating to obtaining regulatory approval for a Maltese management company to establish a branch or to provide services on a cross-border basis in a foreign Member State or EEA State or for a European management company to establish a branch or to provide management services on a cross-border basis in Malta. Furthermore, the proposed Regulations stipulate which competent authority has regulatory jurisdiction to take action in the case of breaches of the relevant requirements by a management company which provides services on a cross-border basis or through the establishment of a branch in a Member State or EEA State other than its home Member State.

Lastly, the Investment Services Act (UCITS Mergers) Regulations, 2011 establish the regulatory requirements for domestic mergers and cross-border mergers. The proposed regulations also address the costs and entry into effect of UCITS Mergers, the consequences thereof, as well as the merger of master and feeder UCITS.

The draft Legal Notices were circulated for consultation and the industry was encouraged to provide feedback by 19<sup>th</sup> May 2011.

#### *Amendments to the Investment Services Rules for Investment Services Providers*

On 12<sup>th</sup> May 2011, the Authority issued a consultation document on proposed amendments to the Investment Services Rules for Investment Services Providers.

The major changes to these Rules consist primarily in the reorganisation of Part B which at present refers to the standard licence conditions applicable to Investment Services Providers. The proposed changes aim at splitting this section into two namely: Part BI applicable to Investment Services Providers including custodians of Schemes set up as UCITS Schemes and a new Part BII applicable to UCITS Fund Managers. In particular, the proposed Part BII will stipulate the standard licence conditions applicable to Maltese UCITS Management Companies and includes the contents of Directive 2009/65/EC as well as the UCITS Implementing Directive 2010/43/EU on organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company.

Another major amendment to these Rules is the proposed Appendix 11 which outlines the rules on risk management, counterparty risk exposure and issuer concentration which must be complied with by UCITS Fund Managers vis-à-vis managed UCITS. This Appendix transposes Articles 40 to 45 of Commission Directive 2010/43/

EU as well as the Guidelines issued by ESMA on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS and the Guidelines to competent authorities and UCITS management companies on risk measurement and the calculation of global exposure for certain types of structured UCITS.

#### *Amendments to the Investment Services Rules for Retail Collective Investment Schemes*

On 18<sup>th</sup> May 2011, the Authority issued a consultation document on proposed amendments to the Investment Services Rules for Retail Collective Investment Schemes. Apart from updating these Rules to reflect the provisions of Directive 2009/65/EC, the Authority sought to bring the Rules in line with the Investment Services Act (Contractual Funds) Regulations, 2011 and the Companies Act (SICAV Incorporated Cell Companies) Regulations, 2010.

The most important amendments to these Rules are the following:

- a. Introduction of new rules regulating the Key Investor Information Document. In this regard, reference is also made to the Guidelines issued by ESMA on the Key Investor Information Document and on the transition from the Simplified Prospectus to the Key Investor Information Documents. These guidelines are referred to under the Level III Implementing Measures section above.
- b. Reorganisation of the section dealing with self-managed schemes set up as Maltese UCITS. In this regard, a new Appendix VIII is being proposed outlining the supplementary licence conditions applicable to self-managed Maltese UCITS Schemes and transposing in part the provisions of Implementing Directive 2010/43/EU.
- c. A new section is being proposed to providing for the supplementary conditions applicable to retail collective investment schemes which qualify as Feeder UCITS and Master UCITS. This section aims at transposing the applicable provisions of Directive 2009/65/EC and Implementing Directive 2010/42/EU.
- d. The current Appendix VI on Commitment Rules for Commonly Traded Financial Derivatives is being revised to outline the rules on risk management, counterparty risk exposure and issuer concentration. This Appendix proposes to transpose Articles 40 to 45 of Commission Directive 2010/43/EU as well as the Guidelines issued by ESMA on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS and the Guidelines to competent authorities and UCITS management companies on risk measurement and the calculation of global exposure for certain types of structured UCITS. The proposed Appendix VI will apply to UCITS Fund Managers or directly self-managed Schemes.

e. A new Appendix VII prescribing the supplementary licence conditions applicable to schemes set up as money market funds is being proposed. This Appendix implements provisions of Directive 2009/65/EC as well as the Guidelines on a common definition of European money market funds [CESR/10-049].

#### *Way Ahead*

The consultation periods applicable to the Consultation Documents on proposed amendments to the Investment Services Rules for Investment Services Providers and Investment Services Rules for Retail Collective Investment Schemes closes on 1<sup>st</sup> June 2011. All documents are available for download from the [MFSA Website](#). Licence Holders are encouraged to familiarise themselves with the new applicable provisions.

The new Regulations and Rules outlined above will come into effect on 1<sup>st</sup> July 2011.

Any queries or requests for clarifications in respect of the above consultation documents should be addressed to Mr. Christopher P Buttigieg (Deputy Director, Securities and Markets Supervision Unit) [Tel: 25485229, E-mail: [cbuttigieg@mfsa.com.mt](mailto:cbuttigieg@mfsa.com.mt)] Mr. Jonathan Sammut, (Manager, Securities and Markets Supervision Unit), [Tel: 25485452; E-mail: [jsammut@mfsa.com.mt](mailto:jsammut@mfsa.com.mt)] or Dr. Isabelle Agius, (Manager, Regulatory Development Unit) [Tel: 25485359; E-mail: [iagius@mfsa.com.mt](mailto:iagius@mfsa.com.mt)].

#### **Issue by FIAU of New Implementing Procedures**

In May, the MFSA issued a notice to all persons licenced, authorised or otherwise approved to carry out relevant financial business and trustee / fiduciary services ("subject persons"), as defined in the Prevention of Money Laundering and Funding of Terrorism Regulations (Legal Notice 180 of 2008) ("PMLFTR"), that Part I of the Implementing Procedures has been issued by the FIAU and has come into force on 20th May 2011 (*Government Notice 460 – The Malta Government Gazette – Friday 20th May 2011*). Insurers authorised to carry on long term business and who have enrolled persons to act on their behalf in the Tied Insurance Intermediaries List were kindly asked to bring this Notice to the attention of these enrolled persons.

The Implementing Procedures have been issued in terms of Regulation 17 of the PMLFTR and are binding on all subject persons with immediate effect. Subject persons are hereby being notified that a transitory period ending on 30th September 2011 is being granted to enable subject persons to bring their procedures in line with the Implementing Procedures.

As from the date of the entry into force of the Implementing Procedures, subject persons falling under the regulatory or supervisory functions of the MFSA shall no longer be required to inform the MFSA when a disclosure is made to the FIAU in accordance with the PMLFTR.

## MFSA Notices issued during May 2011

24/05/2011- Issue by FIAU of New Implementing Procedures

## Licences – April 2011

### New Licences issued

#### Collective Investment Schemes

##### Professional Investor Funds targeting Qualifying Investors

- Collective Investment Scheme licence issued to **Polaris Finance SICAV plc** in respect of two sub-funds.
- Collective Investment Scheme licences issued to **Venus Multi-Strategy Fund SICAV plc** in respect of seven sub-funds.
- Collective Investment Scheme licence issued to **Sarum Investment SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licences issued to **Priveq Funds SICAV plc** in respect of three sub-funds.
- Collective Investment Scheme licence issued to **MCM Fund SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **PerSYS-TEMcy SICAV plc**.
- Collective Investment Scheme licences issued to **NBCG Fund SICAV plc** in respect of two sub-funds.
- Collective Investment Scheme licence issued to **Innocap Fund SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **Willer Opportunities (Malta) SICAV Limited** in respect of one sub-fund.

#### UCITS

- Collective Investment Scheme licence issued to **Invictus SICAV plc** in respect of one sub-fund.

#### Pensions

##### Retirement Schemes

- Certificate of Registration issued to **The Westerby International Retirement Plan**.
- Certificate of Registration issued to **Momentum Malta Retirement Trust**.

##### Retirement Scheme Administrator

- Certificate of Registration issued to **Momentum Pensions Malta Limited**.

## Insurance

### Insurance Companies

- Licence issued to **SN SecureCorp Insurance Malta Limited** to carry on business of insurance in three classes of the general business.

### Protected Cells

- **A16** has been approved as a cell of **White Rock Insurance (Europe) PCC Limited**.

### Enrolment of Insurance Manager

- **STM Malta Insurance Management Limited** has been granted enrolment in the Managers List.

## Surrendered Licences

### Banking

#### Financial Institutions

- Surrender of licence issued to **Crystal Loan Brokers Limited**.

#### Investment Services

- Surrender of Category 2 licence issued to **Fundior Investment Services Limited**.

#### Collective Investment Schemes

- Surrender of licence issued to **SwissFund SICAV plc** in respect of one sub-fund.
- Cancellation of licence issued to **21st Century Investments SICAV plc**.

#### Trustees

- Surrender of licence issued to **J.P. Morgan Trustee and Depository Company Limited**.

## MFSA Warnings

10/05/2011 - Green Plants Investment Management Ltd.

17/05/2011 - GBS Bank Malta Limited

## Foreign Warnings

Foreign warnings received by MFSA can be viewed on the Authority's Website [www.mfsa.com.mt](http://www.mfsa.com.mt), under [Announcements/Foreign warnings](#) received.

## Forthcoming Events

**June 28** – Hedge Fund Re-domiciliation for Managers – Geneva, Switzerland

**October 2 -5** - FERMA Risk Management Forum 2011 - Stockholm - Sweden

## Forthcoming Courses—Malta International Training Centre

**July 5 – September 1** - Foundation in Insurance Certificate

**July 11 - September 12** - Tied Insurance Intermediaries Certificate

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