

ESMA Chairman, Steven Maijoor, visits MFSA

Steven Maijoor, Chairman of the European Securities and Markets Authority (ESMA) visited the MFSA and held meetings with Chairman Professor Joe Bannister, Director General Marianne Scicluna and other officials from the Authority. The European Securities and Markets Authority is an independent EU Authority that contributes to safeguarding the stability of the European Union's financial system by enhancing the protection of investors and promoting stable financial markets.



Professor Bannister, Mr. Maijoor and MFSA Director General Ms. Marianne Scicluna

Notified AIFs – Latest Developments

Introduction

The transposition in Malta of the Alternative Investment Fund Managers Directive¹ ('AIFMD') strengthened the Maltese regulatory framework applicable to Alternative Investment Fund Managers ('AIFMs') and further reinforced the integrity of the financial system. Even though the AIFMD focussed on establishing a European framework aimed at regulating and supervising AIFMs, the Malta Financial Services Authority ('MFSA') went beyond the AIFMD and made provision for a structured framework for the regulation and supervision of Alternative Investment Funds ('AIFs'). Since July 2013, the authorisation and regulation of AIFs runs parallel with the authorisation and regulation of PIFs which were retained for *de minimis* AIFMs and third country managers. Furthermore, this specific product regulation enabled the MFSA to implement the Regulations (EU) No 345/2013 and 346/2013 on European venture capital funds and European social entrepreneurship funds respectively to the PIF and AIF regimes depending on whether the funds are managed by a full-scope AIFM or a *de minimis* AIFM.

On 1 April 2016, the Authority launched the Notified AIF ('NAIF') regime. This regime marks a clear departure from the MFSA's concept of AIFs as regulated and supervised products and aims at providing AIFMs with a solution

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to market AIFs within the European Union in the shortest timeframe possible. This article proposes to provide an overview of the salient features of the NAIF regime.

Key facts for the establishment of a NAIF

A NAIF can be established in Malta in terms of the Investment Services Act (List of Notified AIFs) Regulations, 2016 and the Investment Services Rules for Investment Services Providers (the 'Rules').

The fund manager establishing and managing the NAIF may either be a full-scope AIFM authorised in terms of the Investment Services Act to provide manage AIFs or alternatively an EU AIFM which is in possession of a management passport under Article 33 of the AIFMD.

On the other hand, the NAIF can be either open-ended or closed-ended and established in any form which is available under Maltese Law namely investment companies i.e. SICAV² or INVCO³, unit trusts, contractual funds or incorporated cells within an incorporated cell company. However, the NAIF regime will not be available to all collective investment schemes. Self-managed AIFs, property funds, loan funds and funds which invest in non-financial assets as further specified by the Authority cannot be established as NAIFs. Furthermore, collective investment schemes which are already licenced in terms of the Investment Services Act cannot convert to the NAIF Regime.

The investor base for NAIFs is restricted to professional investors⁴ and/or qualifying investors⁵. The AIFM is required to adhere to the promotional rules applicable in the jurisdiction(s) where the NAIF is being marketed.

The notification process

The AIFM must submit to the MFSa a notification pack which includes a notification form with the required accompanying documentation within **30 calendar days** from the date of resolution of the governing body of the AIF approving the prospectus. The same process is applicable in the case of notification of sub-funds of NAIFs. The accompanying documentation consists of the following:

- (a) a prospectus containing the minimum contents required and drafted in accordance with the templates provided; prescribed in the Rules and duly compiled having regard to the appropriate pro-forma template provided;
- (b) a resolution by the governing body of the AIF certifying that the prospectus has the minimum contents required and that it has been drafted in accordance pro-forma template;
- (c) a self-certification by the AIFM that, having regard to any delegate manager(s) or advisers it has in place, it has the necessary competence and experience to manage the AIF and monitor effectively any delegate;
- (d) a joint declaration by the AIFM and the governing body of the AIF by which each undertakes responsibility for the AIF, including, *inter alia*, the obligations arising under the AIFMD;

¹ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers

² Investment Company with Variable Share Capital

³ Investment Company with Fixed Share Capital

⁴ "Professional investors" are investors which are considered to be professional clients or which may, on request be treated as professional clients under Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments.

⁵ "Qualifying investors" are investors which invest a minimum of EUR 100,000 or its currency equivalent in the NAIF and declare in writing to the AIFM and the NAIF that they are aware of and accept the risks associated with the proposed investment. Furthermore, qualifying investors are required to satisfy at least one of the following eligibility criteria:

- i. is a body corporate which has net assets in excess of EUR 750,000 or which is part of a group which has net assets in excess of EUR 750,000 or, in each case, the currency equivalent thereof;
- ii. is an unincorporated body of persons or association which has net assets in excess of EUR 750,000 or the currency equivalent;
- iii. is a trust where the net value of the trust's assets is in excess of EUR 750,000 or the currency equivalent;
- iv. is an individual whose net worth or joint net worth with that of the person's spouse, exceeds EUR 750,000 or the currency equivalent; or
- v. is a senior employee or director of a service provider to the NAIF.

- (e) a declaration by the AIFM confirming that it has carried out the necessary due diligence with regard to the service providers of the AIF and the governing body of the AIF. This declaration must include a statement that the AIFM is satisfied with the outcome of this due diligence exercise and there are no untoward features which need to be brought to the attention of the MFSA.

The MFSA will be including the AIF in the List of Notified AIFs within **10 working days** from the date of filing of a duly completed notification pack and at this stage, the prospectus of the NAIF can be dated.

Obligations of the AIFM

Due Diligence

Before submitting a notification to the MFSA for inclusion of an AIF in the List of Notified AIFs, the AIFM is required in terms of the Regulations and the Rules to carry out the necessary due diligence exercise to ensure that the service providers and the governing body of the AIF are 'fit and proper'. In particular, the AIFM shall not permit a person to hold the office of director of the AIF unless it is satisfied on reasonable grounds that the person complies, and will comply on an ongoing basis, with high standards of fitness and probity.

The AIFM must carry out the necessary due diligence and keep records of correspondence in this regard. The documentation related to the due diligence exercise shall be made available upon request for inspection by the MFSA. The AIFM shall also update the relevant due diligence records and documents on an annual basis and shall document the updates carried out.

Whilst on the one hand, the MFSA will not carry out any due diligence but will be relying on the checks and controls carried out by the AIFM in this regard, it may still carry out random checks post-notification, on the AIFM's compliance with the provisions of the Regulations and the Rules. Any adverse findings by the MFSA in relation to any appointment may lead, *inter alia*, to the removal of the NAIF from the List of Notified AIFs.

Appointment of Money Laundering Reporting Officer

The AIFM is required to appoint a money laundering reporting officer to carry out the money laundering reporting function in relation to the AIF. The duties of the money laundering reporting officer including the reporting obligations of the NAIF can be carried out by the administrator of the NAIF in accordance with the outsourcing agreement entered into between the AIFM, the AIF and the fund administrator. Nonetheless, the NAIF would still remain responsible for compliance with the requirements under the Prevention of Money Laundering and Funding of Terrorism Regulations⁶ and the Implementing Procedures and for the carrying out of the measures specifically assigned to the AIF.

Notification of changes to the prospectus to the MFSA

The AIFM must notify the MFSA of any amendments to the NAIF's prospectus within 30 calendar days from the date of the resolution of the governing body of the NAIF approving the changes to the prospectus. Apart from a copy of the revised prospectus, the notification to the MFSA shall also include:

- (a) a resolution of the governing body of the NAIF certifying that the amendments to the prospectus comply with the standards prescribed in the Rules;
- (b) where the changes concern the investment objectives, policies and restrictions, the governing body of the NAIF shall confirm that the NAIF currently operates in line with the investment objectives, policies and restrictions as set out in the prospectus; and
- (c) a confirmation from the governing body of the NAIF confirming that the changes to the prospectus confirm with the provision of the constitutional documents.

⁶ S.L. 373.01

The MFSA will acknowledge the receipt of the amendments to the prospectus within ten business days from the filing of the said notification.

Removal of the NAIF from the List of Notified AIFs

The inclusion of a NAIF in the List of Notified AIFs will not imply that the NAIF is authorised or licensed or in any way approved by the MFSA. Nonetheless, the MFSA retains the discretion to remove the NAIF from the List of Notified AIFs. The Regulations further specify the following instances when the AIFM may request the Authority to remove a NAIF or a sub-fund of a NAIF from the List of Notified AIFs:

- (a) upon expiration of the duration of the NAIF or its winding up;
- (b) in any case where the custodian has given notice of termination under the custody agreement or is in liquidation or subject to bankruptcy proceedings or has had its license to provide custody services in respect of NAIFs suspended or cancelled;
- (c) in any case where the AIFM has given notice of termination or is in liquidation or subject to bankruptcy proceedings or has had its licence to act as an AIFM suspended or cancelled and an eligible replacement AIFM has not been appointed within thirty (30) days from notice of termination;
- (d) in any case where any member of the governing body of the NAIF or any service provider appointed by the NAIF or by the AIFM on behalf of the NAIF fails to comply on an ongoing basis with the required high standards of fitness and properness and the AIFM has not within thirty (30) days arranged for a replacement member of the governing body or service provider to be appointed;
- (e) in all other cases as may be specified in the agreement between the NAIF and the AIFM as grounds for requesting removal of the NAIF from the List of NAIFs; and
- (f) in all other cases as may be specified in the custody agreement between the NAIF or the AIFM on behalf of the NAIF and the custodian as grounds for requesting removal of NAIF from the List of Notified AIFs.

Upon removal from the List of Notified AIFs, the AIF must cease trading other than for the purpose of winding down the operations of the AIF or sub-fund and the AIF or sub-fund must then be liquidated or otherwise terminated in accordance with the requirements of Maltese law.

What's next?

The Investment Services Act (List of Notified AIFs) Regulations were published in the Government Gazette. All legislative texts, pro-forma templates and guidance notes are available for download from the MFSA website - <http://goo.gl/yN1IHr>.

MFSa: The wider picture

Article first published in the May edition of Captive Review, a leading insurance journal, providing details about recent legislative and regulatory developments in the sector

Solvency II came into force on 1 January 2016 following a long period of preparation. Its phasing in stage is also drawing to an end with the publication of EIOPA's Implementing Technical Standards and guidelines. This is indeed the dawn of the Solvency II era.

Unfolding scenario

Solvency II ushers in a new way of looking at risk focused on bringing the objectives of both regulators and operators into close alignment. This is a regulatory regime that is built on dialogue with market participants and that seeks to better understand business models, strategies and underlying risks in order to ensure stability, mitigate and pre-empt risk wherever possible. In the ORSA, insurers have a structured framework on which to develop strong risk management capabilities in the face of challenging economic and market conditions. It provides the background against which the industry will need to develop a strong risk culture that informs strategic business choices and the setting of business objectives.

Of the three main objectives of Solvency II, convergence in capital requirements, standards of disclosure and risk management processes, the latter is perhaps the hardest part to achieve. Nevertheless the MFSa is confident that the message is coming across and that the Maltese insurance industry is able to meet the standards expected in all three areas.

Equally important is the "fourth dimension" of Solvency II. As the market starts to operate under the new regime, regulators must ensure a high degree of uniformity in the application of these standards in all 28 Member States of the EU. This is why, as we go forward, regulators are becoming more deeply engaged in the process of supervisory convergence aimed at ensuring a level playing field and equal safeguards across the entire internal market.

There is however a "fifth dimension" that, in a sense, lies beyond the scope of Solvency II and that has more to do with the ability to continue to innovate and develop new business strategies in an increasingly standardised regulatory environment. The question is even more pertinent from a Maltese perspective given that Malta has been able to develop a cluster of insurance and related service providers that have managed to establish a strong international and cross-border presence in the space of a few years. The simple answer to that is that EU regulation has never been a stumbling block to Malta's development; if anything it has helped the country achieve recognition.

The more complex answer is that innovation knows no boundaries but, as anything else in business, needs to be managed within regulatory parameters and comes with a strong denominator called reputation. On this score, there is no reason why insurers cannot continue to develop new products and innovative strategies under the new order. On their part the Maltese legislators and the MFSa will continue to improve on the tools and infrastructures that have contributed to the formation of this cluster and to promote more synergies with other types of financial service activities.

In this vein, the MFSa has recently been focusing its efforts on upgrading and enhancing the product structuring framework. One area that is receiving particular attention is securitisation, which also presents challenges and opportunities to insurers.

Product development

The Securitisation Act was an important piece of legislation when it was first introduced into Maltese law in 2006. It recognised the fact that financial innovation had long moved on from the established practices of raising capital using traditional methods of security. The capital market called for new legal tools beyond those offered by more conventional instruments. Fund managers and market providers welcomed this development as this would increase product diversity and flexibility in asset allocation, as well as add scope and depth to the financial market.

Institutional investors including insurance undertakings and pension funds can also benefit from the more attractive investment opportunities that may be created as a result of these developments, particularly as the scope of Solvency II capital requirements is revisited to encourage the development of a sustainable securitisations market in the EU.

Over the last ten years securitisation has provided local financial operators with the opportunity to create vehicles and issue financial instruments linked to specific assets or packaged risks. The Securitisation Act greatly improved the scope for structuring new investment products under Maltese law. This was followed by other important developments including the setting up of the European Wholesale Securities Market ('EWSM') which provided a new opportunity to list debt securities on a regulated market for wholesale investors in the EU.

As the new framework settled in it was earmarked for further development aimed particularly at integrating securitisation into the financial services value chain and for the introduction of add-ons that would render it more amenable to specific types of products and give it an edge over comparable frameworks elsewhere.

The first of these initiatives was to explore ways in which the industry could meaningfully tap the ability to securitise risk provided by the Act.

Securitisation of risk

Given the synergies that may be obtained by combining the inroads made in alternative risk transfer and captive insurance structures with the new possibilities offered by securitisation law, the MFSa had picked out insurance-linked securities (ILS) for the next stage of development.

ILSs are a type of financial instrument whose values are driven by insurance loss events. Typical ILS instruments are those linked to property losses due to natural catastrophes. For investors these represent a unique asset class, the return from which is uncorrelated to that of the broader financial market.

The extension of the legal framework in this direction involved a complex interplay between the provisions of company, insurance and securitisation law. The Reinsurance Special Purpose Vehicle Regulations, published at the beginning of 2014, were based on a careful assessment of these laws and came up with a dedicated framework for the licensing and regulation of these new types of specialised vehicles that were appearing on the international market.

The RSPV Regulations had the added advantage of being already aligned with EIOPA's Advice for the development of Level 2 Implementing Measures on Special Purpose Vehicles under Solvency II allowing operators to position themselves in this market at an early stage. They have now been seamlessly integrated into the new Solvency II regime.

The ability to purchase a securitised risk instrument (in the form of bonds, notes and possibly equity) helps insurers to transfer and hedge various types of risks. It is also possible to structure the product in different tranches based on proximity to the underlying risk thus making the product more attractive to investors.

Cell Structures

The next logical step was to introduce the cell concept in the area of securitisation. The protected cell concept was already very well established in both law and practice when the Securitisation Cell Company (SCC) Regulations came into force at the end of 2014. Protected cell companies have in fact been a feature of Maltese insurance law for well over a decade and a number of insurance PCCs have already been operating successfully for a number of years. Investment Schemes having multiple segregated sub-funds with different investment objectives have also been around for much longer than that.

The Securitisation Cell Company is therefore founded on well-trodden ground. Similar to its counterparts in the insurance and investment sectors, it allows securitisation vehicles making use of multiple compartments to establish these within a legally entrenched framework that recognises and protects different sets of assets or risks

placed in separate cells. Thus investors in instruments issued through one cell of an SCC are insulated from any possible claims arising from other creditors of the same SCC, both in respect of instruments issued through other cells, as well as the general creditors of the company.

Securitisation cell legislation therefore provides a fireproof ring around contractual arrangements and assets placed within separate cells of the same company. This may be replicated in other cells thus providing for unlimited scaling up of securitisation activity within a single special purpose vehicle. Securitisation Cell Companies may be set up in preparation for the establishment of future Cells, while Cells will require individual authorisation from the MFSa based on the type of risk and the nature of the instrument involved.

Opalesque Malta Roundtable 2016 discusses fund vehicles

In an extensive report, Opalesque gives a healthy check to Malta's financial services industry, noting that Malta as a funds and finance centre is on a healthy growth path. In 2015, 112 new funds were registered and two new custodians and 22 new investment managers were licensed. The insurance gross premium was up 33.6% year on year and pension assets were up 66% year on year, with now 38 retirement schemes and 27 asset managers in that sector.



Participants at the Opalesque Malta Roundtable 2016

The report notes that in the early days of AIFMD, one of the main criticisms was that it was forcing regulation on investors who do not need or require the protection afforded by AIFMD and that this regulation will increase compliance costs for those type of investors that do not need or want this protection. Malta has designed a solution for these type of investors where they could, through a new regime called Notified Alternative Investment Funds structure (Notified AIFs / NAIFs) reduce their compliance costs, if they so wish because the regulation of the NAIF will be undertaken through the AIFM.

"These new breed of funds has the potential to become the vehicles of choice for the industry within the next four years. Once included in the list of notified AIFs, the fund can be passported in terms of the AIFMD and therefore marketed on a cross-border basis pursuant to the AIFMD. The new Notified AIF regime applies to not only AIFMs licensed in Malta but also to other AIFMs passporting into Malta. An influx of Notified AIF fund launches is expected already by the end of 2016."

The 2016 Roundtable discussed the characteristics and benefits of Notified AIFs and also lists the categories of AIFs which are excluded and cannot be Notified AIFs. Alongside the AIFs, which until now the authority has always regulated and supervised, Malta also offers the Professional Investor Fund (PIF) regime, which was retained for the de minimis fund managers which fell outside the scope of the AIFMD and third country fund managers. The PIF funds provide a "lighter" regulatory regime and more flexibility than UCITS, AIFs and other funds which are also licensed by the MFSa. Malta's PIF regime has been a great success. Read in this Roundtable how MFSa is currently reviewing the PIF regime.

Participants in the Opalesque 2016 Malta Roundtable included the MFSa Chairman, Prof Joe Bannister as well as Angele Galea St John, Christopher Buttigieg, Robert Higgans, Joseph Agius and Isabelle Agius.

A full transcript of the 2016 event is available on: <https://goo.gl/qHaPJQ>

European Supervisory Authorities Press Releases

European Insurance and Occupational Pensions Authority (EIOPA)

22/06/2016 - [EIOPA updates on the financial stability risks](#)

European Banking Authority (EBA)

01/06/2016 - [EBA and EIB discuss opportunities and challenges of synthetic securitisation in the banking sector](#)

03/06/2016 - [EBA publishes decision on data for supervisory benchmarking](#)

14/06/2016 - [EBA publishes final draft technical standards on specialised lending exposures](#)

16/06/2016 - [EBA publishes its 2015 Annual Report](#)

22/06/2016 - [EBA publishes its consumer trends report 2016](#)

MFSA Circulars

10/06/2016 - [Circular on the payment of notification fees in support of applications for cross-border marketing of units of European venture capital funds and/or European social entrepreneurship funds in terms of the EuVECA/EuSEF Regulations](#)

14/06/2016 - [Update - Circular addressed to Investment Firms and/or Applicants for an Investment Services Licence offering or intending to offer Financial Contracts for Difference \(CFDs\) and other speculative products](#)

14/06/2016 - [Circular addressed to Investment Firms and Credit Institutions when selling bail-in securities](#)

27/06/2016 - [Circular - European Commission Technical Workshop on the implementation of the PRIIPs framework](#)

MFSA Warnings

10/06/2016 - [MFSA Warning - www.kbceuro.com](#)

Foreign warnings received by MFSA can be viewed on [MFSA Website / Announcements / Warnings](#)

MFSA Consultation Papers

09/06/2016 - [Consultation on the Implementation of Audit Committee Requirements with respect to Credit Institutions](#)

28/06/2016 - [Consultation on Amendments to the Listing Rules implementing Audit Committee Requirements](#)

MFSA Licences - May 2016

NEW LICENCES

Collective Investment Schemes

Professional Investor Funds targeting Qualifying Investors

- Collective Investment Scheme licence issued to **Audentia Capital SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **Amergeris Wealth Management SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **Nina Fund SICAV plc** in respect of one sub-fund.

Alternative Investment Funds targeting Qualifying Investors

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

Incorporated Cells

- Collective Investment Scheme licence issued to **Titan Opportunities Fund IC SICAV plc**.

Company Service Providers

- Registration certificate issued to **Blaustein Limited**.

Securitisation Vehicles

Notified Securitisation Vehicles

- Acknowledgement issued to **ETD Malta Limited**.
- Acknowledgement issued to **ETI Malta Limited**.
- Acknowledgement issued to **Pantheon Securities SCC Plc**.
- Acknowledgement issued to **PHM Malta SV 29 Limited**.
- Acknowledgement issued to **PHM Malta SV 28 Limited**.
- Acknowledgement issued to **Suite Finance SCC Plc**.

Cells

- Acknowledgement issued to **SUITE-RE 2026 ZC Cell**.

Insurance

Cells

- Licence issued to **Freedom Health Cell**, a protected cell of Advent Insurance PCC Limited, to write business of insurance in two classes of the general business.

SURRENDERED LICENCES

Collective Investment Schemes

Professional Investor Funds targeting Qualifying Investors

- Surrender of licenses issued to **Woodman Funds SICAV plc** in respect of two sub-funds.

EXTENDED AND REVISED LICENCES

Collective Investment Schemes

- Licence issued to **Vltava Fund SICAV plc** was converted from Professional Investor Fund to Alternative Investment Fund.

Investment Services

- Upgrade of license issued to **Seia Capital Management Limited** to include the provision of Investment Advice and Reception and Transmission of Orders for Professional Clients (including Collective Investment Schemes) and Management for Professional Clients (excluding Collective investment Schemes).

Registry of Companies - New Registrations – May 2016

Companies	Partnerships
419	10

Forthcoming Events

July 9 - [Malta Funds Industry Association/MFSA Seminar: Notified AIFs](#)

October 3-4 - [FERMA - European Risk Seminar](#)



Training by members of the ECC:

- [Malta International Training Centre](#)
- [Malta Institute of Accountants](#)
- [Institute of Financial Services](#)
- [Institute of Legal Studies](#)
- [Institute of Financial Services Practitioners](#)
- [Malta Institute of Management](#)
- [Castille Institute](#)
- [PricewaterhouseCoopers](#)
- [Malta College of Arts, Science and Technology \(MCAST\), Institute of Business & Commerce](#)
- [The Department of Banking & Finance, Faculty of Economics, Management & Accountancy, The University of Malta](#)

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