

# MFSA Newsletter

May 2014

MFSA  
MALTA FINANCIAL SERVICES AUTHORITY

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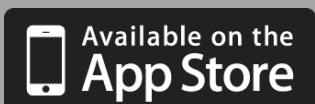
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## Malta's reputation as a leading financial jurisdiction highlighted by Dukascopy TV

Swiss Financial Television station Dukascopy TV featured Malta prominently this month, highlighting Malta's growth as a leading financial services jurisdiction that is cementing its name amongst the most reputable world financial jurisdictions.



Dukascopy featured an interview with MFSA Chairman Prof. Joe Bannister, in an opportunity to further deliver Malta's message of quality to Swiss viewers and to online viewers around Europe.

Highlighting the fact that Malta has been classified amongst the top 15 jurisdictions in a recent World Economic Forum Report in terms of financial services sector development, Dukascopy sought to understand the key selling points underpinning the positive results that were being achieved.

The Chairman explained Malta's key benefits, ranging from EU and Eurozone membership and therefore adherence to EU legislation, and its associated passporting rights, the quality and availability of highly-trained human resources, a strong legal system which is influenced by both English civil law as well as European law, as well as advantageous tax levels, framed within an EU and OECD approved model.

Prof. Bannister highlighted that Malta is particularly keen on innovation. The MFSA Chairman explained that not only Malta today is a strong onshore jurisdiction which fully conforms with EU legislation, but it actually encourages and incentivises off-shore companies to redomicile to Malta.



*Prof. Bannister interviewed by Dukascopy TV*

Prof. Bannister explained that re-domiciliation is an efficient way of migrating a fund or an insurance company into Malta without having to dissolve and re-incorporate the company. The process ensures continuity of performance resulting in little disturbance to the policy holders.

Questioned on MFSA's strategy in terms of regulation, Prof. Bannister delved into the benefits of risk-based regulation, explaining that prior to the granting of a license, a strict evaluation of both the company and its key individuals takes place, the latter an essential step to ensure whether specific persons requesting a license deserve to obtain a Maltese license or otherwise.

The full interview can be viewed on: <http://forextv.com/market-video/joe-bannister-on-malta-as-a-financial-centre/>

## Fund industry under the spotlight during Opalesque 2014 Malta Roundtable

The Maltese fund industry, its development, challenges and opportunities were amongst the key themes discussed during the 2014 edition of the Opalesque Malta Roundtable. A number of key speakers, local and foreign, shed further light on developments in financial regulation and the role played by the Maltese jurisdiction in the development of this industry both locally and on a European level.

# OPALESQUE

MFSa Chairman Prof. Bannister said that the fund industry is one of the main industries that have developed on the island since the establishment of the financial services sector, and a number of established international names are now active and operate from Malta. Highlighting the MFSa's efforts at being innovative and transparent, Prof. Bannister noted that the Board of Governors of the MFSa has always encouraged the regulator "to be proactive and not simply tick boxes, but work with the companies and help them develop their products."



*Speakers at the Opalesque Malta 2014 Roundtable*

"Our aim is to be very proactive and innovative in the field of regulation", continued the MFSa Chairman: "We tend to look at regulation every couple of years, to remove any gold plating, because of all the changes that have taken place and accumulated over time. While we have to add more regulations, at the same time we are also very careful not to necessarily start introducing new layers of regulation. Equally, we also look at how we can introduce new features or developments that may be still within the scope of the existing directives."

As an example, Prof. Bannister referred to the introduction of the Incorporated Cell Companies in the area of funds and the AIFM directive, where the MFSa has taken a number of positive steps in response to discussions with the industry.

Prof. Bannister expressed a positive approach towards the development of the funds sector: "Our industry has been growing, particularly since joining the European Union in 2004. Malta is an ideal jurisdiction for start-up funds in terms of cost and services available. We also see more managers who want to be AIFM in Malta. Existing managers licensed here are going to re-structure and become AIFM in Malta, and they run more operations from here, such as in risk management."

Together with the fund management companies, the Maltese financial services jurisdiction is also witnessing an increase in the number of funds set up in Malta. This is backed up by the stability of Malta as a jurisdiction, particularly as there is political consensus on the finance centre. Crucially, Prof. Bannister pointed out, the political parties in Parliament continuously pledge their consensus and they never vote on financial services legislation: "The regulation is strong and robust and the MFSa is perceived as an efficient and progressive regulator." The banking system is solid and none of the banks required any assistance. Even though the liability of the finance centre represents 800% of GDP, Prof. Bannister pointed out that however, in reality the liability is only 250% [which is lower than the EU average] as the remaining comes from banks which have no connection with the local economy."

Chris Buttigieg, Deputy Director in the Securities and Markets Supervision Unit, focused on the challenges encountered with regard to implementation of legislation in view of the apparent lack of regulatory and supervisory convergence at European level. "Convergence of regulation and supervision at European level is critical for the proper functioning of the internal market and to achieve the systemic stability and investor protection objectives of financial regulation. Differences in the interpretation of regulation across the EU could have an impact on the level of cross-border business within the internal market and the degree of investor protection afforded in the different Member States".

He also explained that regulatory and supervisory convergence is also a means to address regulatory and supervisory arbitrage, which weakens the overall structure of European system for financial supervision. In a post-financial crisis world, the achievement of a sufficient degree of convergence is one of the primary objectives of the European Securities and Markets Authority ('ESMA') and the other European supervisory authorities.

"Nonetheless, in certain areas of finance such as high frequency trading ('HFT') some countries have taken the lead in the absence of harmonization and convergence. This has led to a fragmented approach to regulation and supervision which, however, is now being addressed through specific regulatory requirements in the MiFID II package."

Mr. Buttigieg added that "Europe has yet to achieve the degree of regulatory and supervisory convergence envisaged by policy makers post the financial crisis. On the up side, Mr Buttigieg acknowledged the efforts for more convergence which are being made and this augurs well for the development of the industry and the opportunities which this can create."

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## New Investment Services Rules for Loan Funds

Following the receipt of a number of enquiries concerning the possibility of establishing loan funds, towards the end of February, the Authority has launched an ad hoc Rulebook regulating collective investment schemes which are authorised to invest through loans. The approval and licensing of loan funds is regulated by the Investment Services Act which provides for the licensing and regulation of collective investment schemes investing in any type of assets, subject to any conditions as the MFSA may impose.

These Investment Services Rules apply specifically to loan funds in addition to any laws, regulations or standard licence conditions that are already applicable to Alternative Investment Funds or Professional Investor Funds.

In preparing these Rules, the MFSA has taken as a basis the provisions of the Alternative Investment Fund Managers Directive as transposed into Maltese law in the first half of 2013. The Authority has also taken into consideration the various studies and policy recommendations on the regulation of shadow banking published by the Financial Stability Board and other standard setting bodies in recent months. The Rules also draw on the relevant MFSA Banking Rules in order to address the specific areas of risk in a manner that ensures consistency with the Banking Act while retaining the inherent characteristics of collective investment schemes established under the Investment Services Act.

Through the adoption of these Rules, the Authority has sought to address a number of risks that are primarily associated with lending activities. Risks to the stability of the funds are addressed through the inclusion of exposure limits. In order to mitigate against the transmission or acquisition of unwarranted credit risk, loan funds are also required to follow strict credit assessment standards. Fund managers must also satisfy special competence and remuneration requirements. In order to minimise the risk of cross contamination with the banking sector, loan funds are restricted from lending to credit or financial institutions and must carry out credit assessments at the point of acquisition of any loan portfolios, if this is the case. Pricing risk is, inter alia, addressed through the application of a regularly updated variable NAV. In order to mitigate against liquidity risks loan funds must be closed-ended or at least make use of appropriate redemption gates. Other liquidity requirements also apply. Leverage is not allowed.

### SALIENT FEATURES

The following are the salient features of this new regime:

#### 1. General Requirements

Fund managers will be able to establish loan funds either as Professional Investor Funds or as Alternative Investment Funds depending on whether the fund manager is a de minimis AIFM or an AIFM licenced in terms of the Act, respectively.

The funds are to be structured as closed-ended scheme (SICAVs with closed ended features), will be able to invest through loans solely and exclusively to unlisted companies including SMEs. Financial institutions as defined in the Rules will not be eligible to receive financing from these Schemes.

The Rulebook covers direct origination of loans by the Scheme or the acquisition by the Scheme of a portfolio of loans or a direct interest in loans which gives rise to a direct legal relationship between the Scheme as lender and the borrower.

## 2. *Target Investors*

Units of these collective investment schemes shall only be marketed to professional investors as defined in Section I to Annex II to the Markets in Financial Services Directive (“MiFID”) and/or to investors who, on request, elect to be treated as professional clients as per Section II of Annex II to the MiFID and who commit to investing a minimum of EUR 100,000.

## 3. *Service Providers*

The Scheme is required to appoint a fund manager, a custodian, an auditor, a compliance officer and a money laundering reporting officer. The Scheme will also have to make arrangements for the valuation function.

In particular, the Rules provide that the fund manager shall have sufficient financial resources and liquidity available to enable it to conduct its business, and such organisation, systems, experience and expertise deemed necessary by the Authority for it to provide management services to these funds.

The fund manager shall also possess the required skills and expertise to ensure that any lending decisions are made with due consideration and will also have proven experience in the area of granting of loans including credit assessment, credit provisioning monitoring and control of exposures as outlined in the Rules.

The Rules also provide for the appointment of a single custodian for each Scheme, either as a [Category 4a](#) or [Category 4b](#) Investment Services Licence Holder. A Category 4a Investment Services Licence Holder is eligible to act as custodian to all categories of collective investment schemes. On the other hand, a Category 4b Investment Services Licence Holder (‘depository light’) can act as custodian of schemes which:

- a. have no redemption rights exercisable during the period of 5 years from the date of the initial investments; and
- b. in accordance with their core investment policy, generally do not invest in assets that must be held in custody; or
- c. generally invest in issuers or non-listed companies in order to potentially acquire control over such companies.

## 4. *Investment Restrictions*

The Rulebook provides that the fund manager shall comply with the investment objectives, policies and restrictions of the scheme as outlined in the Offering Document, particularly with regards to eligible investments, the risk profile of the fund and other terms of the offer. The use of leverage and the reuse of collateral by the Scheme are not permitted.

## 5. *Credit Risk*

The fund manager is required to establish and implement a credit risk strategy and related policies in proportion with the scope and sophistication of the Scheme’s activities. The credit policy will establish the framework for lending and guide the credit granting activities of the Scheme. It shall include a risk appetite statement and shall address items such as target markets, portfolio mix, structuring of credit limits, processing and reporting. The fund manager is bound to submit for approval by its governing body, the Scheme’s strategy for the selection of risks and maximising the profits and returns.

## 6. *Liquidity Management Policy*

The manager is also required to employ an appropriate liquidity management system and adopt procedures which enable the monitoring of liquidity risk of the scheme and to ensure that the liquidity profile of the investments of the scheme complies with its underlying obligations. Whilst this feature is already provided for in the provisions of the AIFMD, the new Rulebook seeks to further build on this requirement using concepts normally applied in the banking sector, such as the liquid-asset proportion. Notwithstanding that the scheme shall be structured as a closed-ended scheme, the fund manager may on a yearly basis opt to redeem and cancel any shares in accordance with the terms of the offer should the fund have excess liquidity. The Rules also make provision for the application of a variable NAV.

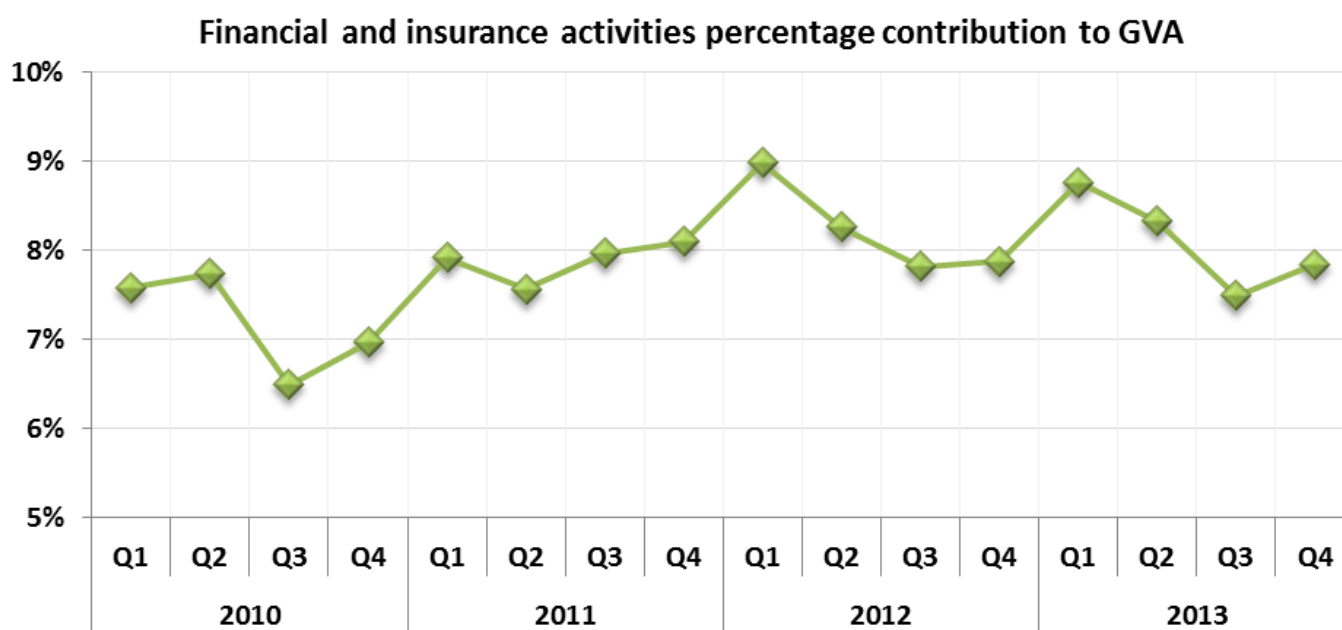
## 7. Disclosure to investors

The Rules also make provision for detailed disclosure obligations to investors. These Standard Licence Conditions are modelled on the disclosure provisions prescribed in the AIFMD. Furthermore, the fund manager must make available to investors an annual report.

The new Rulebook is available for download from the MFSa website at the following link <http://www.mfsa.com.mt/pages/viewcontent.aspx?id=512>.

Any queries or requests for clarifications in respect of the above should be addressed to Dr. Isabelle Agius, MFSa Regulatory Development Unit, Phone: 2548 5359 or by e-mail on [iagius@mfsa.com.mt](mailto:iagius@mfsa.com.mt).

## Financial and insurance activities percentage contribution to GVA



*source: NSO release - Gross Domestic Product: 2013 (047/2014)*

Malta's financial services sector continued to be a major contributor to the local economy. During the fourth quarter of 2013, Gross Value Added (GVA) from financial and insurance activities contributed 7.8 per cent to total GVA.

On an aggregate basis, GVA from financial and insurance activities during 2013 amounted to EUR 506.3 million in absolute terms. This reflected a growth of 2.7 per cent when compared to the previous year. Consequently, financial and insurance activities contributed 8.1 per cent to total GVA during 2013 in comparison to 7.2 per cent, 7.9 per cent and 8.2 per cent recorded in 2010, 2011 and 2012 respectively.



## Industry Updates

### MiFID II and MiFIR

On 22nd May 2014 ESMA issued consultation documents on the implementation of the revised Markets in Financial Instruments Directive (MiFID II) and Regulation (MiFIR).

This is the first step in the process of translating the MiFID II/MiFIR requirements into practically applicable rules and regulations to address the effects of the financial crisis and to improve financial market transparency and strengthen investor protection.

MiFID II/MiFIR introduce changes that will have a large impact on the EU's financial markets, these include transparency requirements for a broader range of asset classes; the obligation to trade derivatives on-exchange; requirements on algorithmic and high-frequency-trading and new supervisory tools for commodity derivatives. It will also strengthen protection for retail investors through limits on the use of commissions; conditions for the provision of independent investment advice; stricter organisational requirements for product design and distribution; product intervention powers; and the disclosure of costs and charges.

MiFID II/MiFIR contains over 100 requirements for ESMA to draft Regulatory Technical Standards (RTS) and Implementing Technical Standards (ITS), and to provide Technical Advice to the European Commission to allow it to adopt delegated acts.

In order to ensure that MiFID II achieves its objectives in practice, ESMA is publishing the following documents:

1. ***Consultation Paper on MiFID/MiFIR Technical Advice*** – this document can be accessed from the following link: <https://www.mfsa.com.mt/pages/viewcontent.aspx?id=339>
2. ***Discussion Paper on MiFID/MiFIR draft RTS/ITS*** – this document can be accessed from the following link: <https://www.mfsa.com.mt/pages/viewcontent.aspx?id=339>

### Target Audience

These publications will be of interest to all stakeholders involved in the securities markets, in particular to investment firms and credit institutions performing investment services and activities. These publications are also important for trade associations and industry bodies, institutional and retail investors and their advisers, and consumer groups, as well as any market participant because the MiFID II and MiFIR requirements seek to implement enhanced provisions to ensure investor protection and the transparency and orderly running of financial markets with potential impacts for anyone engaged in the dealing with or processing of financial instruments.

### Response to ESMA documents

In order to facilitate feedback, ESMA will be using an IT tool that does not allow processing of responses which do not follow the formatting indications described hereunder. Therefore, in responding, stakeholders should click on the following link: <http://www.esma.europa.eu/consultations/overview/10> and follow the under-mentioned instructions:

- i. use the published template ( "form to reply") and send responses in Word format;
- ii. do not remove the tags of type <ESMA\_QUESTION\_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- iii. if stakeholders do not have a response to a question, this should not be deleted. The text between the tags should be left as follows: "TYPE YOUR TEXT HERE".

Responses are most helpful:

- i. if they respond to the question stated;
- ii. contain a clear rationale, including on any related costs and benefits; and
- iii. describe any alternatives that ESMA should consider.

Given the breadth of issues covered, ESMA expects and encourages respondents to specially answer those questions relevant to their business, interest and experience.

**Publication of responses:**

All contributions received by ESMA will be published following the end of the consultation period, unless otherwise requested. You are therefore kindly requested to clearly indicate by ticking the appropriate checkbox in the website submission form, if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. Note also that a confidential response may be requested from ESMA in accordance with ESMA's rules on access to documents. ESMA may consult you if it receives such a request. Any decision ESMA make is reviewable by ESMA's Board of Appeal and the European Ombudsman.

The closing date for responses to both papers is **Friday 1 August 2014**.

**Contacts**

Should you have any queries regarding the above, please do not hesitate to contact: Dr. Christopher P. Buttigieg, Tel: 25485229; [cbuttigieg@mfsa.com.mt](mailto:cbuttigieg@mfsa.com.mt); Mr Edward Grech, Tel 25485447; [egrech@mfsa.com.mt](mailto:egrech@mfsa.com.mt) or Ms Sara Antonia Borg, Tel: 25485451; [saborg@mfsa.com.mt](mailto:saborg@mfsa.com.mt).

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## European Supervisory Authorities Press Releases issued during May 2014

### European Central Bank



**27/05/2014** - [ECB Press Release - ECB launches public consultation on draft ECB regulation on supervisory fees](#)

### European Securities and Markets Authority (ESMA)



**22/05/2014** - [ESMA launches the consultation process for the implementation of the revised Markets in Financial Instruments Directive \(MiFID II\) and Regulation \(MiFIR\)](#)

### European Insurance and Occupational Pensions Authority (EIOPA)



**15/05/2014** - [EIOPA introduces a new format for its Financial Stability Report](#)

## MFSA Licences - April 2014

### LICENCES ISSUED

#### Banking

##### *Financial Institutions*

- Financial Institution licence issued to **AWS Malta Limited**.
- Financial Institution licence issued to **Paymix Limited**.

#### Collective Investment Schemes

##### *Professional Investor Funds targeting Qualifying Investors*

- Collective Investment Scheme licence issued to **Strategica Funds SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **PerSYSTEMCY SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **The Nascent Fund SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **Lansrode Capital Management SICAV Plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **AMAGIS Capital Funds SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **Eagle Investment SICAV plc** in respect of one sub-fund.

#### Investment Services

- Category 1A licence issued to **Neox Capital Limited**.
- Category 2 licence issued to **AMAGIS Capital Management Limited**.

### SURRENDERED LICENCES

#### Collective Investment Schemes

##### *Professional Investor Funds targeting Qualifying Investors*

- Surrender of licence issued to **Brightwell Portfolio Fund SICAV plc** in respect of 13 sub-funds.
- Surrender of licence issued to **Vector Commodity Fund Malta SICAV plc**.
- Surrender of licence issued to **Vector Commodity Master Fund SICAV Limited**.
- Surrender of licence issued to **TGA Funds SICAV plc** in respect of one sub-fund.
- Surrender of licence issued to **Adaptiveverse SICAV plc** in respect of one sub-fund.
- Surrender of licence issued to **Wood & Company Fund SICAV Plc** in respect of one sub-fund.



### Investment Services

- Surrender of licence issued to **Afex (Europe) Limited**.

### EXTENDED AND REVISED LICENCES

#### Insurance

##### *Insurance Undertaking*

- Extension issued to **AarhusKarlshamn Insurance Malta Limited** to carry on the business of reinsurance in general business class 13 – General liability in terms of the Insurance Business Act, 1998.

#### Banking

##### *Credit Institutions*

- Extension of licence issued to **FIMBank plc** to carry out Activity 1 as listed in the Schedule to the Act.

### Investment Services

- Revision of licence issued to **Gamma Capital Markets Limited** to act as a 'Maltese Management Company'.
- Extension of licence issued to **Citco Custody Limited** to provide Execution of orders, Reception and Transmission of Orders, Nominee, Trustee and Custody to Retail Clients in respect of the following instruments: Transferable Securities, Money Market Instruments, Units in collective investment schemes, Certificates or other instruments which confer property rights in respect of any instrument within Schedule 2 of the Investment Services Act.

### Trustees and Fiduciaries

- Extension issued to **Plethora Trusts & Fiduciaries Limited** to include acting as trustee and as an administrator of private foundations in terms of Article 43 of the Trusts and Trustees Act ("TTA").

### Registry of Companies - New Registrations - April 2014

Companies	Partnerships	Total
480	6	486

## MFSA Announcements



### MFSA Circulars

23/05/2014 - [Industry update on MiFID II and MiFIR](#)

12/05/2014 - [Circular addressed to the financial services industry regarding Legal Notices pursuant to the EU Auctioning Regulation](#)

12/05/2014 - [Circular to credit institutions on Transitional Provisions for Own Funds](#)

02/05/2014 - [Circular addressed to all persons authorised in terms of the Trusts and Trustees Act – Trusts and Trustees \(Amendment\) Act \(Act XI of 2014\)](#)



### MFSA Media Releases

30/04/2014 - [Update to investors who hold investment in ARM Asset Backed Securities S.A.](#)



### MFSA Listing Authority Announcements

23/05/2014 - [Extension of period of Suspension of public offer - A25 Gold Producers Corp](#)

09/05/2014 - [Extension of period of Suspension of public offer - A25 Gold Producers Corp](#)



## Forthcoming Events

12/06/2014 - [Insurance Europe Conference 2014](#)

6th International Conference

**The challenge of change: global insurance trends**

12 June 2014, St Julian's, Malta

#InsConf14



12-13/06/2014 - [Malta International Risk & Insurance Congress 2014](#)



18-19/09/2014 - [The 4th Annual Malta Fund Conference 2014](#)

**The 4th Annual Malta Fund Conference  
AIFMD ONE YEAR AFTER**

**Implications for Funds, Managers, Service Providers**

**September 18<sup>th</sup> & 19<sup>th</sup> Morning, 2014 – Hilton – St. Julian's Bay – Malta**

### Education Consultative Council (ECC)

Training by members of the ECC:

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



You can keep up-to-date on our news and regulatory developments by regularly visiting our [website](#) or by subscribing to our [RSS feeds](#).

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