

# MFSA

## MALTA FINANCIAL SERVICES AUTHORITY

**Securities and Markets  
Supervision Unit**

Unit Tel: (+356) 21441155

Unit Fax: (+356) 21449308

12 September 2017

**To: Companies having securities listed on the Malta Stock Exchange**

**Attn: Company Secretaries**

Dear Sir/Madam

**Re: ESMA Peer Review on Guidelines on Enforcement of Financial Information**

The Malta Financial Services Authority ('MFSA') has, earlier on this year, been selected for the purpose of an on-site visit carried out by ESMA as part of the peer review on Guidelines on Enforcement of Financial Information.

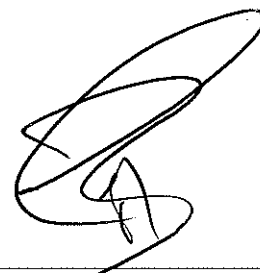
The findings of such review have necessitated MFSA to adopt changes to its processes when it comes to enforcement of financial information including the way the MFSA communicates with issuers and auditors, the focus of the examinations and the type of enforcement action to be taken. The purpose of this letter is to prepare issuers to this change in approach and tackles in detail the Peer Review process and the changes that are expected to be adopted by MFSA going forward.

### 1.0 ESMA Peer Review

The ESMA Work Programme 2016 set out that a peer review is carried out to assess the compliance by National Competent Authorities ('NCAs') with certain of the ESMA Guidelines on Enforcement of Financial Information (ESMA/2014/1293) ('EFI Guidelines').

This peer review was conducted in accordance with Article 30 of Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 ('ESMA Regulation') and the revised ESMA Peer Review Methodology (ESMA/2013/1709) ('Methodology').

The peer review was carried out by an Assessment Group ('AG'), which reported its findings to the ESMA Board of Supervisors for approval.



# MFSA

MALTA FINANCIAL SERVICES AUTHORITY

The peer review was restricted to guidelines 2, 5 and 6 of the EFI Guidelines. The objectives of the peer review were:

a) *In the context of Guideline 2:* to assess the sufficiency of human and financial resources of National Competent Authorities taking into account the number and characteristics of issuers subject to enforcement of financial information and to assess the adequacy of the professional experience and background of enforcers considering the nature of the issues that need to be dealt with under the applicable rules.

b) *In the context of Guideline 5:* to assess whether selection methods in place within an NCA are based on a mixed approach whereby a risk based approach is combined with a sampling and/or rotation approach; to assess whether the risk based approach considers the combination of the probability of infringements by an issuer and its potential impact on the financial markets.

c) *In the context of Guideline 6:* to assess whether the examination procedures in place within an NCA ensure that the enforcement of financial information performed either by unlimited scope examinations, or a combination of unlimited scope and focused examinations, is effective; notably, whether the examinations carried out by enforcers ensured that material errors were likely identified.

On 18 July 2017, ESMA issued a report which gives details of the peer reviews carried out at seven (7) National Competent Authorities ('NCA') including the MFSA, during the first quarter of this year. Details of this report can be obtained through the following link:

[https://www.esma.europa.eu/sites/default/files/library/esma42-111-4138\\_peer\\_review\\_report.pdf](https://www.esma.europa.eu/sites/default/files/library/esma42-111-4138_peer_review_report.pdf)

## 2.0 Changes that are expected to be adopted by the MFSA

The MFSA will be enhancing the current supervisory approach in place when carrying out the enforcement of financial information in accordance with the EFI Guidelines as follows:

### 1. Selection Method

The MFSA is in the process of concluding a Risk Model which will be the basis on which issuers will be selected for future examinations. This approach will consider issuers with a higher probability of infringements and their potential impact on the financial markets. This approach will be combined with a sampling and/or rotation approach with the objective to cover an adequate number of issuers.

Furthermore, the Authority is planning to increase the number of examinations carried out in each calendar year.



# MFSA

MALTA FINANCIAL SERVICES AUTHORITY

## 2. Focus of examinations

As at to date the MFSA has mainly carried out full scope examinations usually with more focus on the disclosure aspect of the financials. Going forward the MFSA will be focusing more on the measurement and recognition of specific items disclosed in the primary statements. Accordingly, issuers may expect that in future MFSA will probe into the measurement and recognition basis of specific items including deferred tax assets and liabilities, valuations of tangible and intangible assets and provisions, amongst others.

## 3. Communications with the issuers and/or auditors

As at to date the MFSA has addressed all its communication on enforcement of financial information to the Company Secretary of the issuers. In the future the MFSA intends to communicate, where necessary, directly with the auditors of the issuer. Also, the MFSA does not exclude instances where it may communicate directly with the audit committee of the issuer.

Amongst others, additional measures include improved visibility of the work undertaken by the Authority in the local domestic market. Going forward, the Authority is planning to hold meetings with issuers and auditors in order to share main findings following an examination. In this regard, meetings with auditors are particularly relevant as the Authority will be in a position of discussing certain matters directly with audit teams with the objective of improving financial reporting on a wider context.

In accordance with the EFI Guidelines, examples of examination procedures of an issuer's financial information include the following:

- a) Asking questions to the issuer, usually in writing, in order to better understand: the areas of the issuer involving significant risks, the significant accounting issues which arose in the year under review, how the issuer treated the significant accounting issues, and how the issuer's chosen accounting treatment complies with the relevant reporting framework;
- b) Posing questions to or having meetings with the auditors of the issuer to discuss complex issues or issues of interest, depending on the needs of the examination process;
- c) Referring matters to the respective boards/committees bodies for the audit and/or approval of financial information, such as a supervisory board or audit committee; and
- d) Engaging in on-site inspections;



# MFSA

MALTA FINANCIAL SERVICES AUTHORITY

## 4. Type of Enforcement Action

In accordance with the EFI Guidelines, whenever a material misstatement is detected, the MFSA should in a timely manner take at least one of the following actions:

- a) Require a reissuance of the financial statements;
- b) Require a corrective note; or
- c) Require a correction in future financial statements with restatement of comparatives, where relevant.

The principles in the EFI Guidelines emphasise the importance of the use of corrective notes and/or corrections in the financial statements. When infringements encountered are material, the Authority intends to enforce the use of corrective notes more often even when dealing with disclosures.

We trust that this letter provides you with information as to what level of supervision and enforcement in respect of financial information will be carried out by the MFSA in the future.

Should you have any queries regarding the above please do not hesitate to contact Ms Lorraine Vella, Senior Manager, Securities and Markets Supervision Unit by e-mail on [lvella@mfsa.com.mt](mailto:lvella@mfsa.com.mt) or to Ms Stephanie Buhagiar Camilleri, Analyst, by email on [scamilleri@mfsa.com.mt](mailto:scamilleri@mfsa.com.mt).

Sincerely,



**Dr Christopher P. Buttigieg**  
**Director**  
**Securities and Markets Supervision Unit**