

# Newsletter



**MFSA**

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MALTA FINANCIAL SERVICES AUTHORITY



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## MFSA to participate in DELTA Summit

*The Malta Financial Services Authority will participate in the upcoming Delta Summit, a major international event on blockchain and digital innovation, being held in Malta this October.*

The Delta Summit will be a major milestone in what has been a very busy year for the Authority with regards to the regulation of the crypto-asset sector. The MFSA's vision establishing itself as a regulator which fosters innovation, is already bearing fruit with leading companies considering Malta as an ideal location to expand their business.

Malta is the first country to provide a holistic regulatory framework which

comprehensively encompasses the DLT sphere. Crucially, the Maltese approach provides legal certainty to a sector still in its infancy until such time that international consensus is reached on a more harmonised regime.

During the summit, MFSA CEO, Joseph Cuschieri and SMSU Director, Dr Christopher P. Buttigieg shall be delivering presentations in order to provide further details on the Authority's efforts to regulate and supervise the sector. The importance of legal certainty, how the three main objectives of financial services regulation (market stability, market integrity and consumer protection) are achieved through the regulatory framework and the main elements thereof, will all be discussed. Moreover, officials

from the fintech team shall also be manning a stand in order to answer any questions.

In this context, the MFSA invites interested parties to visit its stand to discuss the regulatory framework with its officials.

**> Further information on this event is available on its website <https://delta-summit.com>**



# A practical approach to the understanding of Conduct Risk

By Sara Antonia Magri  
/ Senior Analyst, Conduct Supervisory Unit

Since the advent of the Markets in Financial Instruments Directive ['MiFID'], investment firms operating within the investment services industry have become familiar with the term 'conduct risk'. The latter has also been prioritised by regulators. A case in point is the UK wherein a twin peaks regulatory approach was adopted through the set-up of the Financial Conduct Authority (FCA) and the Prudential Regulatory Authority (PRA). In Malta's case, the Malta Financial Services Authority (MFSA) still remained the single regulator for financial services, with the difference that a new supervisory unit was created specifically focused on conduct supervision, namely, the Conduct Supervisory Unit.

Conduct risk arises when an investment firm fails to treat customers fairly, thereby resulting in poor or unfair outcomes for the customer. By inference, the key focus should always be on those processes which directly or indirectly feature customer interaction. If these processes

**"The concept of conduct risk needs to be given adequate thought..."**

are misaligned, then a detrimental effect on the investment firm's conduct and customer relationships is bound to happen which could result in high level of consumer complaints; poor first-line assurance and weak compliance monitoring results.

Small investment firms might be discouraged by the widely-defined obligations to tackle conduct risk. Nonetheless this should not act as a deterrent. As a starting point, firms should examine their business model, strategy and structure in order to critically assess whether any of the drivers and forward-looking risks apply to their own business.

The concept of conduct risk needs to be given adequate thought and thereafter applied to the firm's situation.

Senior management in tandem with the investment firm's Compliance Officer should consider the extent of regulatory risk to which the firm is exposed to, such as: **What are these regulatory risks? Does the investment firm deal with retail clients who require the highest level of protection? Does it design and/or distribute complex financial products that may not be understood** ▶



**by its potential client base?** Safeguards around interaction with the customer are critical to the mitigation of conduct risks. In particular, advisory investment firms should implement processes in order to ensure that advice to customers is suitable – undoubtedly such firms should focus on the client on-boarding process as well as ensure that their relationship with the customer is not one where post-sale neglect could lead to customer detriment.

Conduct risk should also rank high on the Board of Directors' agenda and it is expected that new business initiatives are scrutinized for conduct risk. Senior management should also ensure that the firm's remuneration structures do not

encourage employees to act against the customers' best interests. One cannot underestimate the effect of human element on the investment firm's ability to mitigate conduct risk – obviously this also features the evaluation of conflicts of interest. Clearly, the 'tone at the top' is crucial in order to gain an understanding of the organisational culture. The latter captures the manner in which 'things are done'; 'how decisions are made and people are treated when they agree or disagree with a decision', and 'how people act when no one is looking'. All these facets of organisational culture have a direct impact on the firm's business outcomes and consequently on its level of conduct risk. °

## Consultation on Higher Degree of Investor Protection under The Virtual Financial Assets Act

Regulation safeguarding market integrity and protecting consumers of financial services is crucial for market confidence. The Malta Financial Services Authority has taken note of a number of articles in international media which cite an increase in fraudulent activity and scams in relation to the cryptocurrency field.

As a result, and in line with the functions of the Authority as set out in the Malta Financial Services Authority Act (Chapter 330 of the Laws of Malta), the MFSA is proposing additional regulation in relation to Initial VFA Offerings to complement the rules proposed in the Consultation Paper on the Virtual Financial Assets Rules for Issuers of Virtual Financial Assets, Chapter 2 of the proposed Virtual Financial Assets Rulebook ('Chapter 2 of the Rulebook').

Chapter 2 of the Rulebook which was issued for consultation on the 30 August 2018, already sets out a number of measures which are aimed at safeguarding investors and ensuring market integrity. These inter alia include the appointment of a number of functionaries, such as the Money Laundering Reporting Officer, requirements relating to cyber-security and record keeping, transparency and admission to trading on a DLT exchange. The consultation period for Chapter 2 of the Rulebook closed on the 13 August 2018 and the Authority is pleased to note that numerous feedback has been submitted by various stakeholders.

***The MFSA is currently analysing, evaluating and considering all feedback received and shall be making amendments to the proposed regulations and rules, as may be necessary. In order to further mitigate risks and enhance investor protection, the Authority is proposing a number of changes set out in subsequent sections of this consultation document. The scope of this Consultation, which is available on [www.mfsa.com.mt/vfa](http://www.mfsa.com.mt/vfa) is to obtain industry feedback in relation to the Authority's proposals.***

# ESMA to renew prohibition on binary options



*The European Securities and Markets Authority (ESMA) has agreed to renew the prohibition of the marketing, distribution or sale of binary options to retail clients, in effect since 2 August, from 2 October 2018 for a further three-month period. ESMA has also agreed on the exclusion of a limited number of products from the scope of the measure, as detailed below. ESMA considers that a significant investor protection concern related to the offer of binary options to retail clients continues to exist.*

During its review of the intervention measure, ESMA considered the specific features of binary options currently within the scope of the measures. Certain binary options were found to have specific features which mitigate the risk of investor detriment, namely; they are sufficiently long-term (at least 90 days); are accompanied by a prospectus; and are fully hedged by the provider or another entity within the same group as the provider.

ESMA considers that a binary option that benefits from the cumulative effect of these three criteria is less likely to lead to a significant investor protection concern.

In addition, products that at the end of the term have one of two predetermined payouts, neither of which is less than the initial investment of the client, will be excluded. The pay-out for this type of binary option could be the higher or lower one but in either circumstances the investor would not lose money compared to their total investment.

As the investor's capital is not at risk these products should be explicitly excluded. Hence, ESMA agreed to exclude from the scope of the renewal the following binary options:

A binary option for which the lower of the two predetermined fixed amounts is at least equal to the total payment made by a retail client for the binary option, including any commissions, transaction fees and other related costs; and a binary option that meets cumulatively the following three (3) conditions:

**(a) the term from issuance to maturity is at least ninety (90) calendar days;**

**(b) a prospectus drawn up and approved in accordance with the Prospectus Directive (2003/71/EC) is available to the public; and**

**(c) the binary option does not expose the provider to market risk throughout the term of the binary option and the provider or any of its group entities do not make a profit or loss from the binary option, other than previously disclosed commissions, transaction fees or other related charges.**

ESMA will continue to keep these products under review during the prohibition period. The renewal was agreed by ESMA's Board of Supervisors on 22 August 2018.

ESMA intends to adopt the renewal measure in the official languages of the EU in the coming weeks, following which ESMA will publish an official notice on its website. The measure will then be published in the Official Journal of the EU and will start to apply from 2 October 2018 for a period of three months.

Should you have any queries regarding the above, kindly contact the Conduct Supervisory Unit [spulis@mfsa.com.mt](mailto:spulis@mfsa.com.mt) or [samagri@mfsa.com.mt](mailto:samagri@mfsa.com.mt)



# Credit agency highlights strength of banking system

*The stability of Malta's financial services received a strong endorsement by credit rating agency DBRS, highlighting local banks' healthy Tier 1 capital ratios, the high levels of liquidity as well as good profitability levels. DBRS also positively remarked on the local banks' lending strategies, which lessen the potential negative impacts on the economy.*

The agency welcomed efforts to introduce stricter anti-money laundering legislation, increase resources and establish national coordinating mechanisms by 2020.

Looking at the economy in general, the agency highlighted Malta's economic growth, which still exceeds the European average, while remarking on the consolidation of its financial position, which is registering a fiscal surplus.

Malta's government debt, relative to its GDP, continues to decline. It peaked at 70.1 per cent of the economy in 2011 and stood at 50.7 per cent last year, DBRS said, and is now among the EU's lowest. The IMF, European Commission and Central Bank of Malta all expect it to continue dropping.

The 2018 Summer Forecast positively notes that moderate wage dynamics and regulated prices in the electricity market have helped keep inflation slightly below the euro area average. Inflation is expected to gradually pick up but remain under the 2 per cent, next year.

The European Commission further acknowledges that Malta's sizeable

current account surplus was sustained reflecting the solid performance of the internationally-oriented services sector. Earlier in August, another credit rating agency, Fitch, has also issued a strong endorsement in its regular review, and confirmed Malta's credit rating as A+ with a stable outlook.



## **MFSA Circulars**

**02/08/2018**

[Circular to Collective Investment Schemes licensed in Malta in relation to submission of Central Bank of Malta statistical returns](#)

**13/08/2018**

[Spots and Foreign Exchange \(FX\) Forward Contracts and their scope in MiFID II](#)

**27/08/2018**

[ESMA to renew prohibition on Binary Options](#)

## **MFSA Consultation Documents & Feedback Statements**

**21/08/2018**

[Consultation Paper on achieving a Higher Degree of Investor Protection under the Virtual Financial Assets Act](#)

**31/08/2018**

[Consultation Paper on the Virtual Financial Assets Rules for VFA Service Providers](#)

## **MFSA Media Releases**

**02/08/2018**

[MFSA statement regarding S&P's global rating on Bank of Valletta](#)

## **Warnings**

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

## **European Supervisory Authorities' Announcements**

**24/08/2018**

[ESMA to renew prohibition on binary options for a further three months](#)

**29/08/2018**

[EBA launches consultations on supervisory reporting for the reporting framework](#)

## MFSA Licences – August 2018

### **New Licences**

#### **Collective Investment Schemes**

##### ***Alternative Investor Fund***

Collective Investment Scheme licence issued to RohFund Global SICAV plc (“the Scheme”) in respect to one sub-fund.

##### ***Professional Investor Fund***

Collective Investment Scheme licence issued to Audentia Capital SICAV II plc (“the Scheme”) in respect to one sub-fund.

#### **UCITS**

Collective Investment Scheme licence issued Eiger SICAV plc (“the Scheme”) in respect to one sub-fund.

#### **Pensions**

##### ***Personal Retirement Scheme***

Registration of The Ohio Pension Scheme as a personal retirement scheme in terms of Article 4 of the Retirement Pensions Act.

#### **Company Service Provider**

Registration certificate issued to Vista Marine & Aviation Limited.

Registration certificate issued to AML-Atlantis Management Ltd.

Registration certificate issued to Integra Corporate Services Limited.

#### **Investment Services**

Category 2 licence issued to Huber & Partners Limited.

#### **Securitisation Vehicle**

Acknowledgment issued to Knight Capital Cell.

### **Extension and Revised Licences**

#### **Collective Investment Schemes**

##### ***Professional Investor Funds***

Revision of licence issued to **Clerkenwell SICAV plc** (“the Company”) in relation to one sub-fund so as to reflect the conversion of the Sub-Fund into a Sub-Fund targeting Qualifying Investors.

#### **Insurance**

Revision of licence issued to **Propgen Insurance Limited** to reflect a change in the classes of insurance business.

#### **Investment Services**

Revision of Category 2 licence issued to **SDP Capital Management (Malta) Limited** (“the Company”) to include Management of Investments for Professional Clients (including Collective Investment Schemes) in relation to all the instruments listed in the Company’s licence.

Revision of Category 2 licence issued to **Standard Advisory Services Limited** (“the Company”) to provide (i) Investment advice, (ii) Management of investments, (iii) Reception and transmission of order, and (iv) Execution of orders on behalf of other persons to Professional Clients (excluding collective investment schemes) and to Eligible Counterparties.

### **Surrendered Licences**

#### **Collective Investment Schemes**

##### ***Professional Investor Funds***

Surrender of licence issued to **J8 Umbrella Funds SICAV plc** (“the Scheme”) in respect of one sub-fund.

#### **UCITS**

Surrender of licence issued to **2.1**

**Alternative Investments SICAV plc** (“the Scheme”) in respect of its one and only sub-fund.

Surrender of licence issued to **Libero International SICAV plc** (“the Scheme”) in respect of one sub-fund.

#### **Trusts and Trustees**

Cancellation of Authorisation issued to **DF Corporate Services Limited**.

#### **Investment Services**

Surrender of Category 1 licence issued to **Hyde Park Investment International Limited**.

Surrender of Category 1 licence issued to **W & J Coppini Investment Services Limited**.

Surrender of Category 2 licence issued to **Thybo Investment Management (Malta) Limited**.

Surrender of Category 2 licence issued to **Somerset Management (Malta) Limited**.

#### **Company Service Provider**

Cancellation of registration issued to **Geofocus Solutions Limited** (“the Company”).

### **Registry of Companies - New Registrations - August 2018**

<b>Companies</b>	280
<b>Partnerships</b>	7



## Forthcoming Events

**11 September 2018**

Seminar on Due Diligence and  
Cybersecurity in relation to DLT

**3-5 October 2018**

Delta Summit

## Training by members of the ECC:

- [Malta International Training Centre](#)
- [Malta Institute of Accountants](#)
- [Malta Stock Exchange Institute \(MSEI\)](#)
- [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](#)

*Communications to be addressed to:  
The Secretary, Educational  
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MFSA  
**ECC**  
Education Consultative Council



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MFSA

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