

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

16 December 2014

Securities and Markets
Supervision Unit

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By e-mail

Dear Sir/ Madam,

Re: Second Circular to the financial services industry on the transparency requirements applicable to Alternative Investment Fund Managers ('AIFMs')

Reference is made to the AIFMD Reporting Obligations under Articles 3(3)(d) and 24 of the AIFMD, Appendix 13 to Part B of the Investment Services Rules for Investment Services Providers, Appendix 8 to Part B of the Investment Services Rules for Alternative Investment Funds ('AIFs'), Appendix I to Part B of the Investment Services Rules for Professional Investor Funds ('PIFs') and to the industry session on the subject organised by the MFSA on 15 December 2014.

The purpose of the reporting returns is to: (a) ensure a consistent and uniform application of the implementation of the reports at European Union level, (b) to provide details on the information that AIFMs need to report, and (c) to allow National Competent Authorities ('NCAs') to monitor systemic risk.

Please refer to the attached presentations provided during the respective sessions of the seminar:

- 1) **General Overview of Regulatory Developments in relation to Disclosure Requirements – Mr Joseph J. Agius;**
- 2) **The MFSA's Practical Implementation of the AIFMD Reporting Requirements – Mr Ian Meli; and**
- 3) **The Submission of the Reporting Files – Web Portal System Demonstration – Mr Andrew Said.**

The salient points that were discussed during the seminar are highlighted below.



1

[I] General Overview of the Regulatory Developments

The AIFM reporting obligations are applicable in the following manner:

- a) Maltese AIFMs are required to report to the MFSA in relation to all AIFs under management. Other AIFMs will report to their Home NCA.

De minimis AIFMs, 'full' AIFMs as well as self-managed AIFs and PIFs fall within the scope of the reporting obligations.

- b) Non-EU AIFMs marketing AIFs into the EU or EEA are required to file the AIFM returns to each EU NCA which they market their AIFs into; and

- c) Multiple AIFs reporting under Article 42 of the AIFMD are only required to report the AIFs marketed in Malta to the MFSA.

To note that information needs to be reported both at the AIFM and at the AIF level for each AIF under management and the entity which is responsible in both cases is the AIFM and not the AIF. The AIFMD reports are extensive reports containing 339 data fields. The frequency and content of reporting depends on the assets under management together with the leverage level employed by the AIFs under management need to be carefully considered.

The AIFMD reporting system of the MFSA will be launched in January 2015 and all AIFMs (including *de minimis* AIFMs) licensed prior to Quarter 4 of 2014 are expected to report to the MFSA by 31 January 2015. The data to be reported to the AIFMD reporting system may be found in:

Record	Applicable Article of AIFMD	Application
AIFM Record	24(1) AIFMD	<i>De minimis</i> AIFM, full AIFM and AIFMs marketing under the private placement regime
AIF Record	24(1) AIFMD	<i>De minimis</i> AIFM, full AIFM and AIFMs marketing under the private placement regime
AIF Record	24(2) AIFMD	<i>De minimis</i> AIFM, AIFMs marketing under the private placement regime and a subset of AIFs
AIF Record	24(4) AIFMD	<i>De minimis</i> AIFM, AIFMs marketing under the private placement regime and a subset of AIFs



[II] Content of Reporting

The information to be submitted to the MFSA is listed in Annex IV of the Delegated Regulation (EU) No 231/2013 of 19 December 2012 and XML version 1.2 as published by ESMA [ESMA/2013/1361]. Moreover, technical information on the inputting of specific fields is provided in the ESMA AIFMD reporting IT Technical Guidance as revised [ESMA/2013/1358]

Content to be Reported

In a nutshell, under Articles 3(3)(d) and 24(1) of the AIFMD the AIFM is required to report on the principal markets, main instruments traded, principal exposures of each AIF together with the most important concentrations. Moreover, for each AIF under management falling within the scope of Article 24(2), the AIFM has to report information on individual exposures, value of turnover, dominant influence (for private equity funds), market risk profile, counterparty risk profile, liquidity profile (including investor redemptions and side letters), borrowing risk, exposure risk and historical risk profile.

For each AIF under management employing leverage on a substantial basis¹, the AIFM is required to report the overall AIF level of leverage employed, a break-down between leverage arising from borrowing of cash or securities and leverage embedded in financial derivatives, the five largest sources of borrowed cash and the reuse of the AIF's assets under leveraging arrangements.

Specific Fund Reporting

Feeder AIFs are to be considered individually and should not aggregate all the information in one feeder AIF report. The feeder AIFs should not look through the holdings of the master AIF(s).

No look through of the holdings of the underlying funds in relation to fund of funds in which the AIF invests is required.

AIFs established in the form of umbrella AIFs with several compartments/ sub-funds are required to report AIF information at compartment/ sub-fund level.

¹ An AIF is deemed to be employing leverage on a substantial basis if the leverage ratio calculated according to the Commitment Approach is at least three times the NAV.

AIFM Reporting Frequency Categories

AIFMs are required to report to the MFSA for the first full quarter following the issue date of the licence. For example, an AIFM licensed in Quarter 3 of 2014 subject to annual reporting needs to submit the first report covering the period from 1 October to 31 December 2014.

The AIFM reporting categories are based on the calendar year and the reporting dates are therefore 31 March, 30 June, 30 September and 31 December as applicable. The reporting frequency for AIFMs is dependent on: (i) the marketing location of the AIF, (ii) the size of assets under management, (iii) the leverage of the AIFs under management and (iv) whether the AIF invests in non-listed companies and issuers intended to acquire control (i.e. whether the AIF is a private equity fund). Two levels of reporting exist, one at AIFM level and one at AIF level. The following reporting frequency categories are applicable to Maltese AIFMs and to non-EU AIFMs marketing an EU and/or non-EU AIF in Malta.

	Assets under management	Frequency of Reporting
De minimis or Full AIFM	Less than EUR 100 million	Annual
	Less than EUR 500 million unleveraged with five year lock-up period	Annual
AIFM	Greater than EUR 100 million <i>and</i> less than EUR 1 billion	Half-yearly
	Greater than EUR 500 million unleveraged with five year lock-up period <i>and</i> less than EUR 1 billion	Half-yearly
	Greater than EUR 1 billion	Quarterly
Specific AIF Reporting	AIFs greater than EUR 500 million	Quarterly
	Unleveraged AIF investing in non-listed companies and issuers in order to acquire control	Annual

For further details it is advised to consult the three reporting obligations flowcharts on Annex I to the ESMA Guidelines on reporting obligations under Article 3(3)(d) and 24(1), (2) and (4) of the AIFMD [EMSA/2014/869].



[III] Reporting Format

The returns have to be submitted to the MFSA as a compressed ZIP file through the MFSA Licence Holder Portal (which requires the completion of a registration form including the static IP address of the AIFM). In-built consistency checks will be performed on the returns provided.

The MFSA has an obligation to submit the AIFM returns to the European Securities and Markets Authority ('ESMA'). Therefore, after the MFSA performs the validation checks on the files received the accepted files will be submitted to ESMA. However, ESMA will not be amending or modifying such reports but may request the MFSA and the licensed AIFMs to amend an incorrect return. The AIFMD reporting system will therefore provide a full historic database.

The AIFM reports have to be submitted to the MFSA through the MFSA Licence Holder Portal. In this regard, it is important that all AIFMs register with the MFSA by providing the LH Portal registration forms including a static IP address that will be used to submit the returns.

Naming Convention

Before uploading the returns on the MFSA Licence Holder Portal, the XML files (one AIFM file and one or more AIF files) should be:

- 1) Saved in a specific conventions – MT_DATMAN_CE_01 for AIFM files and MT_DATAIF_CE_01 for AIF files where:
 - a) MT is fixed for reporting to the MFSA;
 - b) DATMAN and DATAIF denotes an AIFM and AIF file respectively;
 - c) CE refers to Central Europe; and
 - d) 01 indicates the file number.

- 2) Compressed as one zip files in the format LICENCEHOLDERCODE_MMMYYYY.zip where the licence holder code can be found from the Portal, MMM are the first three letter of the end of the period and YYYY is the year.



[IV] Change of an AIFM and Change in Status of an AIF

Change in AIFM

When the AIFM of an AIF changes between two reporting dates, the former AIFM is not required to report any information under Articles 3(3)(d) or 24 of the AIFMD to the MFSA at the end of the applicable reporting period. The information under Articles 3(3)(d) or 24 of the AIFMD should be reported by the new AIFM at the end of the reporting period covering the whole period based on information provided by the former AIFM. The same procedure is applicable when an AIFM is merged into another AIFM and no longer exists.

Liquidated or Merged AIF

AIFMs should provide the last report of the AIF to their NCA immediately after the AIF has been liquidated or merged.

An AIF could enter into a liquidation procedure (administrative procedure) whereby it is no longer managed by the AIFM and the liquidation is instead carried out by a liquidator. In that case, the AIFM is required to provide a report to the MFSA for the AIF before the liquidator takes over the responsibility for the liquidation of the AIF.

[V] Specific Reporting

National Codes

The AIFM and AIF national codes are unique identifiers of an AIFM and AIF respectively. The code is essentially the licence number issued on the licence granted by the MFSA to the AIF or AIFM with a minor adjustment. In this regard, any punctuation marks or spaces should be excluded from the original code provided in the licence. For example, the national code for licence number IS/ 1385 would be IS1385. Failure to provide the national codes in the specified format will not allow the AIFM to submit a file as it would fail the relevant validation check.

AIFMs or AIFs not licensed by the MFSA should follow the same procedure unless their Home National Competent Authority has already granted a specific national code.



AIFMs with No Data to Report

AIFMs with no data to report are still required to submit a return to the MFSA. AIFMs with no AIFs under management shall submit an AIFM file only whilst AIFMs managing an AIF which has not yet been launched should submit an AIFM file and an AIF file. In the latter scenario, the returns should be completed in the following manner:

- a) Fields 1-21 of the AIFM file should be filled in as appropriate;
- b) Field 21 (AIFM no reporting flag) of the AIFM and field 23 should read True (“T”);
- c) Fields 1-23 of the AIF file shall be completed as applicable; and
- d) The other data fields should be left empty as otherwise the files will not pass the validation checks.

Change in Net Asset Value (‘NAV’) over the Reporting Period

The ESMA template requires changes in the net asset value of an AIF during the reporting period. When the final NAV has not yet been published prior to the reporting deadline, it is advised to use a draft NAV that has been calculated in accordance with the AIF’s Offering Documentation and Valuation Policy. In this regard, it is recommended that AIFMs establish a threshold testing policy to determine whether changes in the final NAV have to be reported to the MFSA through an updated return for the respective reporting period.

Share Classes in Different Currencies

Every share class has to be disclosed separately while the submission of the ISIN code of the respective share class is optional depending on whether the class has an ISIN code. AIFs with different share classes denominated in different currencies should choose one base currency for the purpose of the reporting obligations and such currency should be used throughout the reporting.

[VI] The Application of the ESMA Opinion [ESMA/2013/1340]

The information in the ESMA Opinion has been removed from the text of the ESMA Guidelines on Reporting Obligations. Minor divergences in the application of the ESMA Opinion may exist between different European Union jurisdictions. AIFMs (i) licensed by the



7

MFSA and (ii) who are subject to either quarterly or annual reporting obligations are required to report the additional information provided in the ESMA Opinion.²

The information includes:

- a) Information on high frequency trading including the total number of transactions and the corresponding market value of buys and sells over the reporting period;
- b) Whether a short position is used to hedge a position with similar exposure and, if so, the extent of the hedging expressed as a percentage of the position hedged;
- c) A geographical breakdown of the AIF's investments;
- d) Information on risk measures including vega exposure, value-at-risk³, net FX delta as well as net commodity delta; and
- e) Information on non-EU master AIFs not marketed in the EU.

[VII] Way Forward

At this stage, AIFMs are expected to be at an advanced stage in their implementation of the AIFMD reporting system. It is important that the Compliance Officers or their delegates ensure that the AIFMD returns are submitted and accepted by the MFSA within the aforementioned deadlines.

AIFMs are required to monitor carefully changes to the assets under management figure and the leverage level employed at the AIF level and inform the MFSA of any changes that may impact their reporting frequency.

The MFSA will be issuing additional Reporting Guidelines for Alternative Investment Fund Managers in due course and will be updating the Reporting Obligations section of the FAQ on the Alternative Investment Fund Managers Directive from time to time.



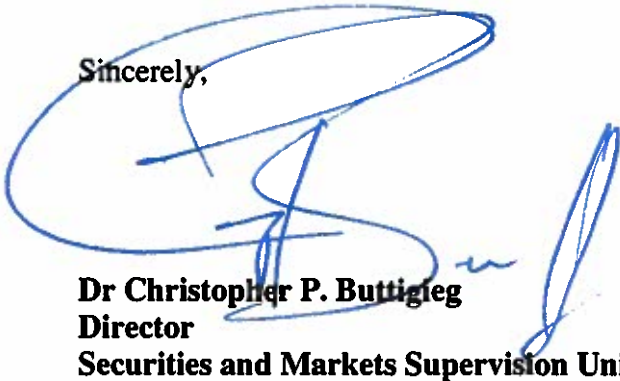
² The information in the ESMA Opinion is denoted by an (*) in the Annex IV consolidated reports provided in Annex 3 to Appendix 13 to the Investment Services Rules for Investment Services Providers.

³ Until further notice value-at-risk should be reported only when it is already calculated. It should be calculated either using a Monte Carlo simulation, Historic simulation or a Parametric approach.

[VIII] Contacts

Any queries on the reporting obligations should be addressed to Mr Ian Meli – Analyst, Securities and Markets Supervision Unit by e-mail on IMeli@mfsa.com.mt. Other queries directly related to the MFSA Licence Holder Portal should be addressed to Mr Andrew Said – Analyst, Securities and Markets Supervision Unit by e-mail on ASaid@mfsa.com.mt.

Sincerely,



Dr Christopher P. Buttigieg
Director
Securities and Markets Supervision Unit