

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Circular addressed to the investment services industry regarding the Prevention of Money Laundering and Funding of Terrorism (Amendment) Regulations, 2009 (L.N. 328 of 2009)

22 December, 2009

Background

The purpose of this circular is to provide the investment services industry with:

[i] a brief overview of the amendments to the Prevention of Money Laundering and Funding of Terrorism Regulations, 2008;

[ii] guidance regarding the interpretation of the term '*marketing*' as used in the definition of *relevant financial business* relating to collective investment schemes which has been amended through L.N. 328 of 2009; and

[iii] brief details of the practical implications for licensed collective investment schemes and applicants for a collective investment scheme licence.

The relevant amendments

On 6th November 2009 the Prevention of Money Laundering and Funding of Terrorism (Amendment) Regulations, 2009 were published in the Government Gazette. A copy of these Regulations are available on the MFSA web-page in the section entitled '*Anti-Money Laundering*'. The amendments relate to *inter alia* the meaning of *relevant financial business*, which is defined in Regulation 2 of the Prevention of Money Laundering and Funding of Terrorism Regulations, 2008.

Prior to these amendments, Regulation 2 (f) defined *relevant financial business* as including:

“a collective investment scheme licensed or recognised, or required to be licensed or recognised, under the provisions of the Investment Services Act”

Regulation 2 (b) of L.N. 328 of 2009 amended the meaning of *relevant financial business*, which is defined in Regulation 2 (f) as follows:

*“a collective investment scheme **marketing its units or shares** licensed or recognised, or required to be licensed or recognised, under the provisions of the Investment Services Act”*

Therefore, in terms of the amended regulations, a collective investment scheme is a subject person if it markets its units and shares.

The interpretation of the term ‘marketing’

It is the MFSA’s view that the amended definition of *relevant financial business* suggests that all marketing (in any form whatsoever) which brings the scheme into contact with potential investors would qualify it as a *subject person* in terms of regulation 2 of the Prevention of Money Laundering and Funding of Terrorism Regulations, 2008.

Given that collective investment schemes which market units indirectly through other entities may not have any direct contact with potential investors, the MFSA’s interpretation of the term ‘*marketing*’ is that marketing refers to cases where the Scheme itself, either through its directors or through persons directly employed with the Scheme, effectively carries out the marketing of its units or shares. The MFSA considers that the term ‘*marketing*’ should capture [i] all forms of promotion or solicitation and not just offers to the public; and [ii] scenarios where the Scheme itself (through its directors or employees) has direct contact with potential investors.

It is the Authority’s view that the amended definition of *relevant financial business* imposes the obligation of the customer due diligence requirements on collective investment schemes that are in direct contact with potential investors, as they market their units without having recourse to other professionals. This is without prejudice to regulation 12 (1) of the Prevention of Money Laundering and Funding of Terrorism Regulations 2008, which allows collective investment schemes that market their units directly, to rely on the performance of a third party or another subject person to fulfil the customer due diligence requirements provided for under regulation 7 (1) (a) to (c) of the Prevention of Money Laundering and Funding of Terrorism Regulations, 2008.

Practical Implications

The Authority will be updating the *Investment Services Rules for Retail Collective Investment Schemes* and the *Investment Services Rules for Professional Investor Funds* to reflect the fact that only those collective investment schemes which market their units and shares directly are ‘subject persons’ in terms of the Prevention of Money Laundering and Funding of Terrorism Regulations. In the meantime, currently licensed schemes which do not market their units directly and which are therefore no longer ‘subject persons’ in terms of the Prevention of Money Laundering and Funding of Terrorism Regulations, are no longer legally required to abide by the above-mentioned provisions of the Regulations, including the required appointment of a Money Laundering Reporting Officer. The Schemes which do not intend retaining their Money Laundering Reporting Officer, and which consider themselves as no longer qualifying as ‘subject persons’ in terms of the Prevention of Money Laundering and Funding of Terrorism Regulations, are kindly required to inform the Authority in writing in this regard. Such notification should include a confirmation that the Scheme does not market its units, and an undertaking to notify the Financial Intelligence and Analysis Unit and the Authority in advance should it intend to

commence such marketing in future. Moreover, applicants for a collective investment scheme licence will be required to confirm to the Authority whether or not they will be marketing their units.

Contacts

Should you have any queries regarding the above, please do not hesitate to contact:

Mellyora Grech
Manager
2548 5193
mgrech@mfsa.com.mt

Christopher P. Buttigieg
Senior Manager
2548 5229
cbuttigieg@mfsa.com.mt