

21st May 2004

[Address]

SUBJECT: [Name of Scheme]

Dear [Name],

Re: Applicability of the EU UCITS Directive to
- foreign UCITS licensed by the MFSA as a pre-requisite for listing on the MSE
- foreign UCITS Authorised for Active Promotion by the MFSA in terms of SLC 5.32 of the Investment Services Guidelines

As of 1st May 2004, the requirements of Council Directive 85/611/EEC of the 20th December, 1985 (“the Directive”) have been transposed into Maltese law by Legal Notice 207 of 2004 entitled Undertakings for Collective Investment in Transferable Securities and Management Companies Regulations, 2004 (“the Regulations”). A copy of these Regulations can be downloaded from the following section on the MFSA web-site (http://www.mfsa.com.mt/mfsa/investment_services1.htm).

According to these regulations, UCITS based in other EU Member States or in an EEA States no longer require authorisation in terms of Section 5.32 of the Investment Services Guidelines nor is a licence a pre-requisite for listing on Recognised Investment Exchanges to market their units in Malta, provided that the notification procedure established in the Regulations is followed.

Status of UCITS Schemes currently Licensed by MFSA

A number of overseas based collective investment schemes qualifying as UCITS in terms of the Directive currently possess a collective investment scheme licence issued by the MFSA or were authorised for active promotion in Malta in terms of SLC 5.32 (now revised) of the Investment Services Guidelines.

In this regard, your attention is drawn to Regulation 23(3) of the Regulations which states that an overseas based UCITS which, on the date of the coming into force of these regulations, is in possession of a licence issued by the MFSA or is authorised by the MFSA to market its Units in Malta, may continue marketing its units in Malta provided that:

- (a) it notifies both its Home State Regulator and MFSA of its intention to continue to market its units in Malta;
- (b) MFSA receives confirmation from the Home State Regulator that the UCITS in question fulfils the conditions imposed on it by the Directive; and
- (c) it conforms with all the applicable Investment Services Guidelines and with the provisions of the said Regulations.

Appointment of Local Representatives

Please note that in terms of Regulation 8(5) an overseas based UCITS marketing its units in Malta must maintain facilities in Malta for making payments to unit-holders, repurchasing or redeeming units, and making available the information which that overseas UCITS is obliged to provide in terms of the UCITS Regulations. These UCITS must either appoint an Investment Services Licence Holder as its Local Representative to provide such facilities or take other adequate measures as may be agreed with the MFSA. Standard Licence Condition 5.36 introduced in the Investment Services Guidelines post 1st May, 2004 refers in this regard.

Further to the above, we understand that the UCITS scheme which you manage already has a representation agreement with a local Licence Holder to act as its Local Representative in Malta. In this regard, please note that this agreement would still need to be kept in force notwithstanding the fact that the UCITS comes into line with the requirements of the Regulations and will be marketed in Malta in terms of the Directive – unless equally satisfactory alternative arrangements to meet the requirements of Regulation 8(5) are proposed.

Time-Frame

In order to be able to continue marketing the units of the UCITS which you manage in Malta under the new regime, you are requested to abide by the above requirements within six months from the date of this letter. Upon completion of this exercise, those overseas UCITS which are currently licensed by the MFSA as a pre-requisite for their listing on the MSE, will be requested to surrender this Licence. The Admissibility for Listing Rules and MSE Bye Laws have been amended to reflect that licensing of overseas UCITS is no longer a requirement for listing on the Malta Stock Exchange.

Fees

UCITS Schemes currently licensed by the MFSA as a pre-requisite for listing on the MSE or authorised to market units in Malta in terms of the previous SLC 5.32 of the Investment Services Guidelines, will not be subject to additional fees to come into line with the requirements of the Regulations.

However please note that the schemes shall be subject to supervisory fees, payable as follows:

- In the case, of UCITS Schemes currently licensed in terms of the Act, this supervisory fee will be payable annually on the same date as that on which it currently pays its annual licence fees.
- In the case of UCITS currently authorised to actively promote their units in Malta in terms of the previous SLC 5.32 of the Investment Services Act, 1994, this supervisory fee will become payable on the date on which MFSA notifies the scheme that it may market its units in Malta in terms of the Regulations and on every anniversary thereof.

A Legal Notice is to be issued shortly in this regard.

Lastly, please do not hesitate to contact Ms. Marianne Scicluna or Dr. Sarah Pulis at the Malta Financial Services Authority on +356 21 44 1155, should you have queries regarding the above.

Yours sincerely,

Marianne Scicluna
Senior Manager – Investment Services

cc: Local Representative