

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Proposed Amendments to various Legal Notices issued under the Prevention of Financial Markets Abuse Act, 2005 and the Investment Services Act, 1994.

30th July 2008

The documents circulated by the MFSA for the purpose of consultation are in draft form and consist of proposals. Accordingly these proposals are not binding and are subject to changes and revisions following representations received not only from licence-holders and other involved parties, but also following the necessary review and vetting by the Office of the Attorney General and the relevant Minister to whom the MFSA is required by law to provide advice on financial services matters. It is important that persons involved in the consultation bear these considerations in mind.

The MFSA invites comments by not later than Monday 19th August 2008, on the proposed amendments described in this circular. Interested parties are to send their comments in writing addressed to the Director – Securities Unit, MFSA.

1.0 Background

Following the transposition of the Markets in Financial Instruments Directive ('MIFID') into Maltese law, it was necessary to amend the Prevention of Financial Markets Abuse (Fair Presentation of Investment Recommendations and Disclosure of Conflicts of Interest) Regulations, 2005, the Investment Services Act (Investment Advertisements ad Prospectus Exemption) Regulations, 2002 and the European Passport Rights for Investment Firms Regulations, 2007 to:

- a. enhance disclosure requirements for persons providing generic investment recommendations in the light of the new definition of "investment advice" in terms of the Investment Services Act, 1994, and
- b. clarify the application of new regulatory requirements to European investment firms passporting in to Malta when issuing investment advertisements.

2.0 Amendment to the Prevention of Financial Markets Abuse (Fair Presentation of Investment Recommendations and Disclosure of Conflicts of Interest) Regulations, 2005 – Legal Notice 106 of 2005

By virtue of Act XX of 2007, as part of the transposition of the provisions of the MIFID into Maltese law, the definition of “Investment Advice” in the First Schedule to the Investment Services Act, 1994 (“the Act”) was restricted to “personal recommendations” made to a client. This new definition narrowed the original scope of “investment advice” for which an investment services licence is required. Hence, subject to any applicable exemptions, whereas prior to the 2007 amendments, any person providing investment advice – even if generic – required an investment services licence, after the said amendments only persons providing tailored, personal recommendations require an investment services licence.

In light of the above, it was deemed appropriate to introduce additional disclosures when providing such advice and for these to emanate from the Prevention of Financial Markets Abuse (Fair Presentation of Investment Recommendations and Disclosure of Conflicts of Interest) Regulations, 2005. It is being proposed that these regulations be amended as follows:

- 1) the definition of a “relevant person” in regulation 2 is to be widened to include any natural or legal person producing or disseminating recommendations. Currently this is limited to a natural or legal person producing or disseminating recommendations *in the exercise of his profession or the conduct of his business*.
- 2) In regulation 4(2) it is proposed that the fact that the relevant person is not subject to any regulation whatsoever is declared when such person is producing or disseminating recommendations.

3.0 Amendment to Investment Services Act (Investment Advertisements and Prospectus Exemption) Regulations, 2002.

The Investment Services Act (Investment Advertisements and Prospectus Exemption) Regulations require amendment to clarify that European investment firms providing an investment service in Malta on a remote basis in terms of regulation 4 of the European Passport Rights for Investment Firms Regulations, 2007 are not subject to the requirements of Article 11 of the Act, since, in terms of the MiFID, such firms are subject to the rules of their home state insofar as advertising is concerned. On the other hand, European investment firms establishing a branch in Malta, in terms of regulation 3 of the abovementioned Regulations, should still be subject to the requirements of Article 11 of the Act since in terms of MiFID, firms establishing a branch in another Member State are subject to the conduct of business rules (including those relating to marketing communications) of the Host State. It is proposed that these Regulations will be clarified in this regard.

It is being proposed that the current version of the Investment Services Act (Investment Advertisements and Prospectus Exemption) Regulations (LN 355 of

2002) will be superseded with the proposed new version which includes the abovementioned amendments.

4.0 Amendment to the European Passport Rights for Investment Firms (Amendment) Regulations, 2007.

It is proposed that regulation 13 of the European Passport Rights for Investment Firms Regulations, 2007 will be amended to clarify that:

- (a) European investment firms providing services in Malta in terms of regulation 4 of the abovementioned Regulations, may issue adverts in Malta, provided that, in so doing, they comply with any applicable laws and rules in their home Member State or EEA State; and
- (b) an investment advertisement issued or caused to be issued in Malta by a European investment firm establishing a branch in Malta, in terms of regulation 3 of these Regulations, is required to comply in every respect with the applicable requirements under the Investment Services Act, 1994 and other applicable laws and rules in Malta.

Contacts

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