

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Publication of Investment Services Rules and Financial Market Rules and other Developments related to the transposition and implementation of the Markets in Financial Instruments Directive

30th October 2007

1.0 Background

Reference is made to the Authority's various circulars and consultation papers relating to the legal and regulatory changes necessary to transpose the requirements of the Markets in Financial Instruments Directive ('MIFID'). Copies of such circulars are accessible from MFSA's web-site by selecting "Securities/ MiFID".

As part of the transposition of the MiFID into Maltese law, certain changes to the local legal and regulatory framework were required. These included:

- a. amendments to the Financial Markets Act, 1990 and the Investment Services Act, 1994;
- b. the issue of a number of new Legal Notices as well as the amendment of certain Legal Notices issued under the above mentioned Acts;
- c. revisions to the current MFSA Investment Services Guidelines issued in terms of the Investment Services Act and to the General notification directives issued in terms of the Financial Markets Act.

2.0 Legislative Amendments

2.1 Amendments to the Financial Markets Act, 1990 and Investment Services Act, 1994.

The Financial Markets Act, 1990 and the Investment Services Act, 1994 have been amended through the enactment of the Various Financial Services Laws (Amendment) Act ('Act XX of 2007') which was published on the **3rd August 2007**. Such amendments are to come into force on the **1st November 2007**.

The legislative changes to these two Acts relate mainly to the transposition of the MiFID and were the subject of MFSA's circular of the **16th March 2007**.

2.2 Issue of Legal Notices

As advised in MFSA's circular of the **24th May 2007**, a number of Legal Notices currently in force under the Investment Services Act, 1994 and the Financial Markets Act, 1990 need to be repealed or amended and new ones need to be issued in order to transpose the requirements of MiFID. The following is a list of the relevant Legal Notices which are to be published by the end of October, 2007 and brought into force on **1st November, 2007**:

Legal Notices to be issued under the Investment Services Act:

- a. European Passport Rights for Investment Firms Regulations, 2007 (will replace LN 87 of 2004, as amended);
- b. European Passport Rights for Persons Operating Multilateral Trading Facilities Regulations, 2007 (new);
- c. Investment Services (Tied Agents) Regulations, 2007 (new);
- d. Investment Services Act (Licence and Other Fees) Regulations, 2007 (will replace LN 322 of 2006);
- e. Investment Services Act (Exemption) Regulations, 2007 (will replace LN 6 of 1995 as amended).

Legal Notices to be issued under the Financial Markets Act:

- a. European Rights for Regulated Markets Regulations, 2007 (new);
- b. Financial Markets Act (Membership and Access) Regulations, 2007 (will replace LN 285 of 2004);
- c. Financial Markets Act (Off-Market Deals) Regulations, 2007 (will replace LN 286 of 2004);
- d. Regulated Markets (Authorisation Requirements) Regulations, 2007 (will replace LN 3 of 2003);
- e. Regulated Markets (Fees) Regulations, 2007 (will replace LN 4 of 2003);
- f. Transfer of Listed Securities (Amendment) Regulations, 2007 (amends LN287 of 2004).
- g. Financial Markets Act (Transparency) Regulations, 2007 (will replace LN 491 of 2004).

3.0 Publication of new Investment Services Rules

With effect from the 1st November, 2007, the current Investment Services Guidelines will cease to exist and will be replaced by the Investment Services Rules for Investment Services Providers and the Investment Services Rules for Recognised Persons and Retail Collective Investment Schemes.

3.1 New Format & Structure of MFSA Regulatory Requirements issued in terms of the Investment Services Act, 1994

The transposition of the requirements of the MiFID, in particular the transposition of its Implementing Directive (Commission Directive 2006/73/EC of the 10 August 2006), required a total redrafting of the Standard Licence Conditions for Investment Services Licence Holders contained in Part C I of the current Investment Services Guidelines, issued in terms of the Investment Services Act, 1994. MFSA has taken this opportunity to undertake a complete overhaul of the current structure of the Investment Services Guidelines (which shall now be referred to as the 'Investment Services Rules' in accordance with the amendment to Article 6(2)(b) of the Investment Services Act brought about by Act XX of 2007).

In this regard, the Investment Services Rules issued by MFSA will be divided into four separate Rule Books as follows:

a. Investment Services Rules for Investment Services Providers.

These Investment Services Rules are applicable as from the **1st November, 2007** and set out MFSA's regulatory regime applicable to Investment Services Licence Holders, including Custodians and Managers of Collective Investment Schemes. They also include the Rules which are applicable to European Investment Firms establishing a Branch in Malta and to European Management Companies which provide services in Malta, on a cross border basis in terms of the passporting provisions set out in the MIFID and UCITS Directives respectively. These Rules primarily transpose the requirements of the MIFID. Further details relating to these Investment Services Rules are provided in section 3.2 below. These Rules will shortly be accessible on MFSA's web-site by selecting 'Securities/ Investment Services/Investment Services Rules'.

b. Investment Services Rules for Retail Collective Investment Schemes.

The MFSA plans to shortly issue these Rules which will set out MFSA's regulatory regime applicable to Retail Collective Investment Schemes. These Rules will include updated Standard Licence Conditions applicable to Maltese Non-UCITS and Maltese UCITS Collective Investment Schemes and will become applicable to new retail schemes as from the date of their publication. Existing schemes (including new sub-funds of existing schemes), will be granted a transitional period to comply with these new Rules.

c. Investment Services Rules for Recognised Persons and Retail Collective Investment Schemes.

The above-named Rules, which will be issued by MFSA shortly, will reflect the current requirements for Recognised Persons, namely Recognised Fund Administrators and Recognised Private Collective Investment Schemes presently included in Parts A and B of the current Investment Services Guidelines. They will also include the Standard Licence Conditions applicable to Maltese Non-UCITS and

Maltese UCITS Collective Investment Schemes existing as at the date of publication of these Rules including any new sub-funds of such schemes. The Standard Licence Conditions referred to above will reflect the current requirements for such schemes presently included in Part C.II and Part C.III of the current Investment Services Guidelines. Currently licensed schemes will be granted a transitional period to come in line with the new Rules referred to in 'b' above.

d. Investment Services Rules for Professional Investor Funds.

The above-named Rules will reflect the requirements laid out in the current Guidelines for Professional Investor Funds. These Rules will shortly be accessible on MFSA's web-site by selecting 'Securities/ Collective Investment Schemes/ Investment Services Rules. These Investment Services Rules will apply as from 1st November, 2007.

3.2 The Investment Services Rules for Investment Services Providers

The Investment Services Rules for Investment Services Providers shall apply to all Investment Services Licence Holders, licensed in terms of the Investment Services Act, and have been divided as follows:

Part A: The Application Process

This Part contains, inter alia, a description of what constitutes a licensable activity; the criteria which MFSA will apply in considering an application for an Investment Services Licence; a description of the Categories of Investment Services Licence; a detailed description of the Application process; and includes as Schedules, the relevant application Documents for an Investment Services Licence and for the Application for the Registration of Tied Agents in Malta.

This section also includes details of the financial resources requirements for the various categories of Investment Services Licences.

Part B: The Standard Licence Conditions

This Part contains the Standard Licence Conditions applicable to all Investment Services Licence Holders and includes supplementary conditions for Custodians of Collective Investment Schemes and for Managers of Collective Investment Schemes. This Part also includes a number of related Appendices. In this regard, the attention of Investment Services Licence Holders is drawn to the following changes to Appendix I and to the Financial Return contained in Appendix II:

- a. Investment Services Licence Holders will no longer be required to submit a Certificate of Compliance. In this regard Sheet 18 of the current Financial Return has been deleted;
- b. The Representations Sheet (Sheet 17 of the Financial Return) has been enhanced to include details on:

- i. names and percentages of the shareholders holding a qualifying shareholding in the Licence Holder in terms of Article 10 of Directive 2004/39/EC;
- ii. the number of complaints received during the reporting period;
- iii. compliance or otherwise of the Licence Holder with the: (i) the Investment Services Act, 1994, (ii) the applicable Standard Licence Conditions and (iii) other recommendations / directives issued by the MFSA;
- iv. the inclusion of additional financial resources requirements applicable only to Maltese UCITS Management Companies in terms of Directive 85/611/EC.

The attention of fund managers and custodians is drawn to MFSA's circular dated **17th July 2007** which clarifies which of the Standard Licence Conditions are applicable to such entities.

Part C: Rules Applicable to Persons Exercising Passport Rights in Malta

This part is divided into two sections (Part C I and Part C II) as follows:

- a. The Rules contained in Part C I are being issued in terms of Regulation 6 of the European Passport Rights for Investment Firms Regulations, 2007 and are applicable to Maltese Branches of European Investment Firms in terms of Article 32 of the Directive.
- b. The Rules contained in Part C II shall be deemed to be the "applicable provisions" to which European Management Companies are required to comply when carrying on certain activities in terms of Regulations 14(7) and 15(6) of the UCITS and Management Companies Regulations, 2004, as amended.

4.0 Guidance Notes to the Investment Services Rules for Investment Services Providers ("the Guidance Notes").

MFSA has drafted a set of Guidance Notes with a view to provide Licence Holders with best practice guidance on the manner in which they may comply with certain Standard Licence Conditions contained in Part B of the Investment Services Rules for Investment Services Providers.

In preparing these Guidance Notes, MFSA has referred extensively to the Level 3 guidance issued by the Committee of European Securities Regulators ('CESR'). This guidance is available directly on CESR's web-site located at www.cesr.eu .

A draft of these Guidance Notes has been issued to the industry for consultation on the **24th August 2007**. MFSA has updated this draft after taking into consideration the comments received from the industry. The final version of these Guidance Notes will shortly be available on the Authority's website.

Investment Services Licence Holders should note that the content of these Guidance Notes is to be construed merely as guidance and such Guidance Notes do not in any manner replace the Investment Services Rules with which Licence Holders are bound to comply.

5.0 Publication of new Financial Market Rules

Further to MFSA's circular dated **27th July 2007**, the MFSA is now issuing – by virtue of its powers under article 5 of the Financial Markets Act, 1990 – the Financial Market Rules which are applicable to Regulated Markets as from **1st November, 2007** and which *replace* the Notification Directives which were applicable to Recognised Investment Exchanges until the **31st October, 2007**.

The Financial Market Rules transpose certain provisions of the MIFID and refer to the new Legal Notices issued under the Financial Markets Act, 1990. Moreover, the current notification requirements on *Capital and Shareholding* have been removed since these are now to be found in the new **Article 4B** of the amended Financial Markets Act, 1990. A number of new appendices also feature in the Financial Market Rules.

A copy of the Financial Market Rules will shortly be available on the Authority's website by selecting 'Securities/Financial Markets/Financial Market Rules'.

6.0 Contacts

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

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