

# MFSA

MALTA FINANCIAL SERVICES AUTHORITY

## **Updated Question & Answer Guide regarding the investigation into the selling of the La Valette Multi Manager Property Fund**

### ***Introduction***

The Malta Financial Services Authority has issued several media statements regarding the actions taken in connection with the mis-selling of the La Valette Multi Manager Property Fund by Bank of Valletta. Following the publication of those statements, a number of questions have been asked by various people on some aspects of the actions taken by the MFSA.

This document gathers together these questions, clarifies aspects of the actions taken by the MFSA, and so aims to be useful to all people who have an interest in the outcome of those actions. This Q+A is being updated in view of the latest developments.

### ***1. Has the investigation into BOV been completed?***

The MFSA's investigation relating to the sales practices adopted and employed by BOV and its subsidiaries when selling shares in the LVMMPF was closed on 1<sup>st</sup> June 2012. The investigation concluded that in various instances BOV had failed to act in the best interest of investors, as required in terms of the applicable regulatory framework. The statutory maximum fine of €203,150 was imposed on BOV for breaching licence conditions when selling units in the LVMMPF to its clients.

The MFSA also issued a Directive which required BOV to co-operate with a client file review by an independent professional services firm. The client file review was intended to identify any investors who were due compensation under the terms of the Directive. Those investors have now received that compensation.

### ***2. What was the process applied by the MFSA for the selection of the independent professional services firm? Why was Mazars selected?***

The principal objective of the selection process was to ensure that the professional services firm chosen is sufficiently expert and truly independent. It was important that it had neither advised BOV, nor had been involved in the sales of shares in the LVMMPF. Following the announcement of the intention to appoint such a firm, several firms approached the MFSA offering their services and the MFSA approached a number of others. Some firms could not be selected due to potential conflicts of interest. The final selection was made on the basis of

proposals received from the firms in response to terms of reference for the file review process set by the MFSA.

Mazars' proposal offered the best combination of expertise, reasonable cost and independence. Mazars, is an international professional services firm which has offices in 69 different countries. The Malta office of Mazars was responsible for the client file review, and was assisted by experts from the UK and Paris offices of the same professional services firm.

**3. *What was the objective of the client file review?***

The client file review, conducted at the offices of BOV, determined which of BOV's advisory client investors in the LVMMPF could not be shown to qualify as experienced investors, as defined in the supplementary prospectus of the LVMMPF. In other words, those investors for whom the client fact find or BOV's transaction history or other records held by BOV did not demonstrate qualification as an experienced investor as defined in the prospectus. All those BOV advisory client investors in the LVMMPF who did not qualify as experienced investors at the time when the investment was made are entitled to compensation.

**4. *Who will be paying for the client file review?***

The MFSA has required BOV to pay all expenses relating to the client file review carried out by Mazars.

**5. *When was the file review completed?***

Mazars were instructed by the MFSA to complete their review and make their report to the MFSA by the end of 2012. The MFSA received the Independent Expert's Report from Mazars on the 21<sup>st</sup> December, 2012. The Independent Expert's Report included a list of people who were on the basis of the evidence available to Mazars not experienced investors when they made their investment in LVMMPF. These people are entitled to compensation by BOV.

The list of investors who were considered to be entitled to compensation was sent to BOV on 4<sup>th</sup> January, 2013. When this list was sent to the Bank, it was made clear that the Authority expected the process of payment of the additional compensation to start as soon as possible. On receipt of the list from the MFSA, there was a short period of reconciliation of records by BOV. This led to the identification of more client files which needed to be reviewed. The reconciliation process was finalised, the Mazars report updated and payments to investors entitled to compensation from BOV commenced, on the 21st January 2013.

**6. *What is an advisory client? What is the difference between an advisory client and an execution only client?***

An advisory client is someone who has paid for, or received, investment advice from a suitably authorised individual. Execution-only transactions are 'non-advised' transactions. There may have been some contact between the firm and the client prior to the investment

being made, but this need not amount to advice. However, when the transaction is carried out there should be no doubt in the investor's mind regarding whether the transaction is on an execution only or advisory basis.

**7. *I was or may have been an execution only client. Am I entitled to compensation?***

Mazars reviewed all BOV client files for those people who invested in the LVMMMPF. Where the transaction was characterised as an execution only transaction, Mazars reviewed the relevant paperwork and checked whether it had been properly completed. If the paperwork was not properly completed, then the transaction was not treated as being done on an execution only basis. The transaction was treated as if it was an advisory client transaction and an assessment made regarding whether the client was an experienced investor. Where there was insufficient information to show that the client was an experienced investor, then that client was considered as due additional compensation from BOV.

**If the paperwork was completed properly then the transaction has been treated as an execution only transaction.** Part of the paperwork is the experienced investor declaration, which all investors were required to sign prior to investing. Where the experienced investor declaration was correctly completed, the investors will have declared that they are experienced investors. They will accordingly not be entitled to compensation under the terms of the Directive issued by the MFSA.

**8. *What is the amount of compensation?***

All investors who were not eligible to invest in the LVMMMPF as identified from the BOV client file review are eligible for compensation of an amount of €1 per share, less any compensation already received from BOV. This additional compensation will be received by each eligible investor free of any deductions or charges.

**9. *How do I know if I am going to receive compensation?***

BOV has credited all clients due compensation on 21/22 January 2013. Where the credits have been to accounts held at other banks it may take a little time to show as credited to those accounts.

BOV have also issued letters to all clients making it clear whether they have been determined to be execution only clients, experienced advisory clients or not experienced. It is possible that some clients may be judged differently for different transactions (e.g. properly recorded execution only on one occasion and not experienced for another transaction).

**10. *I bought units in the fund through another intermediary. Was my file reviewed by Mazars? Am I due compensation?***

The Directive issued by the MFSA relates only to BOV and sales to BOV clients by BOV. The only files reviewed by Mazars were BOV client files. Anyone who bought through another intermediary may be able to make a claim against that firm if the investor was an advisory client and was not an experienced investor as defined in the prospectus. Investors who believe that they were not an experienced investor, and were an advisory client, should make a claim firstly to the firm that sold them the units and, if they do not accept the firm's position, they are free to make a complaint to the MFSA Consumer Complaints Manager.

**11. *Are the lists of investors assessed by Mazars going to be published?***

It would be quite wrong to breach client confidentiality for all BOV clients who invested in the LVMMPF. The lists of investors and Mazars' findings will not be published. However, the front part of the Mazars report has been published and this includes some details of their assessments.

**12. *What is the definition of an experienced investor?***

The definition of an experienced investor was set out in the relevant prospectus and has changed during the life of the LVMMPF. The definition will therefore depend upon the prospectus that was valid at the time of the investment. The December 2006 prospectus definition was:

Experienced investors are considered as persons having the expertise, experience and knowledge to be in a position to make their own investment decisions and understand the risks involved.

An investor must state the basis on which he/she satisfies this definition, either by confirming that he/she is:

1. a person who has worked in the financial services sector for at least one year in a professional position, or,
2. a person who has been active, for at least one year in a professional position, in the acquisition and/or disposal of real estate property funds and/or in securities linked to real estate property, or,
3. a person who within the past 5 years, carried out investment transactions amounting to at least a sum of or equivalent to USD50,000.

In case of joint Applicants, the Applicants must have either:

- (i) carried out separately, within the past 5 years, investment transactions amounting to at least a sum of or equivalent to USD50,000 in which case each joint holder has to meet, individually, the Experienced Investor criteria, or,
- (ii) carried out jointly, within the past 5 years, investment transactions amounting to at least a sum of or equivalent to USD50,000 in which case, **provided that** they are the same joint holders, the Experienced Investor criteria may be met jointly.

**13. *Has the fund been closed as a result of the investigation?***

Technically speaking the LVMMMPF is still open for subscriptions (i.e. investors may still purchase units into the fund), but the possibility of further investments in the LVMMMPF is remote and consideration of this aspect is largely an academic exercise. In fact, Valletta Fund Services, in their role as administrator, has the right to reject any application for purchase of shares in the LVMMMPF. The MFSA would not expect any applications at this stage to be accepted and has accordingly received confirmation from VFM.

**14. *If BOV and VFM were fined for breaching the leverage restriction why is the prospectus still valid?***

BOV and VFM were fined respectively for **wrongly monitoring** and **wrongly applying** the investment restrictions found in the prospectus. The fines imposed on BOV and VFM therefore have no direct effect on the validity of the current prospectus issued by the Scheme.

**15. *Has BOV appealed against the MFSA Directive?***

Yes, BOV has appealed the Directive which orders them to co-operate with a client file review and pay compensation to those advisory client investors who were not experienced investors when the investment was made. The appeal is currently being heard by the Financial Services Tribunal. BOV is still required to comply with the Directive until a decision is reached by the Financial Services Tribunal on the merit of BOV's appeal.

**16. *Why did the investigation take as long as it did to finish?***

Where the MFSA is considering taking any regulatory action against a licence holder it is important that it does so only after obtaining sufficient facts to be sure that the breach of rules or other offence has actually been committed. Given the seriousness of the potential breaches in this case, the investigation process involved a long series of interviews and correspondence between the MFSA, BOV and other relevant parties including BOV employees and investors in LVMMMPF. This lengthy but vital process was necessary in order to collect the information required for the MFSA to make a properly informed decision, which would have been comprehensively discussed and reviewed internally.

Any proposal for regulatory action is also subject to rigorous scrutiny at the level of the MFSA Supervisory Council, which is composed of the Directors of the Regulatory Units

within the MFSA and which was ultimately responsible for issuing the final decision on the LVMMPPF investigations. The MFSA's decisions are also be subject to appeal.

The MFSA acts independently of interference and pressure, from whatever source, and in compliance with the laws regulating its operations. It does however seek to ensure that its processes and decisions are taken in compliance with the law and with best regulatory practice and that they can withstand judicial scrutiny,

*The following is a list of the abbreviations used in this Q+A.*

<b>Term</b>	<b>Abbreviation</b>
Bank of Valletta plc	'BOV'
La Valette Funds SICAV plc	'the Scheme'
La Valette Multi Manager Property Fund	'LVMMPPF'
Malta Financial Services Authority	'MFSA'
Valletta Fund Management Limited	'VFM'

Disclaimer: The above Q and A seeks to provide guidance and tries to anticipate and answer readers' questions. While the MFSA seeks to ensure that the information in this document is correct, it does not give any express or implied warranty as to its accuracy, nor does it accept any liability for errors or omissions.