

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Securities Unit

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7th August, 2006

To: Investment Services Licence Holders

CC: College of Stockbrokers
Malta Stock Exchange

Dear Sir/Madam,

Re: PFMA *monitoring and reporting* duties of persons professionally arranging transactions in financial instruments

As you may appreciate, market malpractice has the capacity of damaging the integrity and reputation of the Maltese financial market. In this regard, the Prevention of Financial Market Abuse Act, 2005 (henceforth referred to as 'PFMA'), which replaced the Insider Dealing and Market Abuse Offences Act, 1994, has the purpose of *inter alia* safeguarding the integrity of Maltese and European Community financial markets and to enhance investor confidence in such markets. The MFSA is vested with the function of enforcing the PFMA regime.

Investment Services Licence Holders also have a role to play in safeguarding the integrity of the Maltese market and in assisting the MFSA in enforcing the PFMA regime. In this regard, in terms of PFMA Article 11 '*Any person professionally arranging transactions in financial instruments who has a reasonable suspicion that a transaction might constitute the prohibited use of inside information or market manipulation, shall be obliged to notify the competent authority without delay*'.

The purpose of this circular is to remind persons who qualify as *persons professionally arranging transactions in financial instruments* [henceforth also referred to as '*subject persons*'] as to their PFMA *monitoring and reporting* obligations.

1.0 What is Market Abuse?

The PFMA defines "market abuse" as both the prohibited use of inside information and the practice of market manipulation.

In brief, market abuse occurs whenever investors have been unreasonably disadvantaged by others who: -

- (a) have used information which is not available to the public for their own advantage or the advantage of others – [insider dealing];
- (b) have distorted the price setting mechanism of financial instruments or disseminated false or misleading information [market manipulation].

To fully understand what constitutes market abuse, *subject persons* should refer to PFMA articles 6 and 8 together with Part A.1. of the MFSA's Prevention of Financial Markets Abuse Guidance Notes [henceforth referred to as **PFMA Guidance Notes**] a copy of which, is attached for ease of reference.

2.0 Persons professionally arranging transactions in financial instruments and their obligations

In terms of PFMA article 11, any *person professionally arranging transactions in financial instruments* [meaning Investment Services Licence Holders] who has a reasonable suspicion that a transaction might constitute market abuse is obliged to file a *suspicious transaction report* [henceforth referred to as **STR**] with the MFSA within not more than one working day from the relevant date unless otherwise justified by exceptional circumstances.

2.1 Monitoring Obligations

As per regulation 9 (2) of the Prevention of Financial Markets Abuse (Disclosure and Notification) Regulations, 2005 [henceforth referred to as L.N. 108 of 2005] subject persons are to decide on a case-by-case basis whether there are reasonable grounds for suspecting that a transaction involves market abuse. In this regard, as explained in the PFMA Guidance Notes, notification of suspicious transactions requires sufficient indications that the transaction constitutes market abuse. Certain transactions by themselves may not seem suspicious but, when linked to other transactions or events, may lead one to suspect market abuse.

In order to assist subject persons to fulfill their PFMA *monitoring* obligation, section 3.2 of the PFMA Guidance notes gives an overview of possible signals of insider dealing or market manipulation. **Subject persons are encouraged to familiarise themselves thoroughly with these signals.**

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2.2 Manner of Reporting

STRs must be submitted in the form set out in Schedule II of L.N. 108 of 2005. An electronic copy of this document may be retrieved from the MFSA web-page – www.mfsa.com.mt.

As per regulation 10 of L.N. 108 of 2005, an STR may be submitted to the MFSA Securities Unit (a) in written form by mail; (b) by way of electronic mail; or (c) telecopy or fax. This notwithstanding, the means of notification should be secure and one which allows the MFSA Securities Unit to identify the sender with reasonable certainty.

2.3 Professional secrecy under the PFMA

Subject persons notifying the MFSA of a suspicious transaction, have a duty of confidentiality and are required not to inform any other person, in particular the persons on behalf of whom the transactions have been carried out or parties related to those persons, of the said notification.

3.0 Enforcement

All market operators should contribute to the prevention of market abuse and in this regard MFSA expects Investment Services Licence Holders to have proper written procedures covering the above-mentioned PFMA monitoring and reporting obligations.

Please do not hesitate to contact Ms. Audrey Aquilina or Mr. Christopher Buttigieg should you have any queries with respect to the above.

Yours faithfully,



Cristina Parlato Trigona
Director