

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Securities Unit

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4th July 2006

To: The Company Secretary and Persons Discharging Managerial Responsibilities within the Issuer.

Dear Sir/Madam,

Re: Notification of Transactions effected by Persons Discharging Managerial Responsibilities within an Issuer.

In April 2005 the Prevention of Financial Markets Abuse Act, 2005 (henceforth referred to as 'PFMA') came into force. The 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.

In terms of PFMA article 10 '*Any person discharging managerial responsibilities within an issuer of financial instruments and, where applicable, persons closely associated with them, shall notify to the competent authority the existence of transactions conducted on their own account relating to shares of the said issuer or to derivatives or other financial instruments linked to them*'. Regulation 8 of the Prevention of Financial Markets Abuse (Disclosure and Notification) Regulations, 2005 as amended by L.N. 322 of 2005 [henceforth referred to as 'L.N. 108 of 2005'] explains who should report, in which manner and the required frequency of such reporting to the MFSA.

The MFSA has noted that there is still some uncertainty as to who should submit notifications and under what circumstances such notifications should be made. The aim of this circular is to guide persons who qualify as *persons discharging managerial responsibilities within an Issuer* as to:

- (a) who is considered to fall within this category of persons;
- (b) who is considered to be a *person closely associated with a person discharging managerial responsibility within an Issuer*; and
- (c) the notification frequency and the manner in which such notification is required in terms of the PFMA/subsidiary legislation.

1.0 Who is a person discharging managerial responsibility within an Issuer?

PFMA article 2 defines a person *discharging managerial responsibility within an Issuer* as either

- (a) a member of the administrative, management or supervisory bodies of the Issuer; or

- (b) a senior executive who is not a member of the bodies referred to in (a), having regular access to inside information relating, directly or indirectly, to the Issuer, and the power to make managerial decisions affecting the future developments and business prospects of the Issuer.

By way of example, persons appointed on the following boards/committees would be considered as falling within the above-mentioned categories of persons: Board of Directors, Executive Committee, Management Committee, Audit Committee and Remuneration Committee.

2.0 Who is a person closely associated with a person discharging managerial responsibility within an Issuer?

The PFMA also requires notification to the MFSA of transactions conducted on account of persons closely associated with a person discharging managerial responsibilities within an Issuer. These are defined in PFMA article 2 as:

- (a) the spouse of the person discharging managerial responsibilities or any common law spouse or partner of that person considered as equivalent to the spouse by the law of that person's domicile;
- (b) dependent children of the person discharging managerial responsibilities;
- (c) other relatives of the person discharging managerial responsibilities who have shared the same household as that person for at least one year from the date of the transaction concerned; or
- (d) any legal person, trust or partnership, whose managerial responsibilities are discharged by a person referred to in (a), (b) and (c); or by a person discharging managerial responsibilities within an Issuer; or which is *directly or indirectly* controlled by such a person, or that is set up for the benefit of such a person, or whose economic interests are substantially equivalent to those of such a person.

3.0 Notification frequency and the manner in which such notification is required

3.1 When is notification required?

Notification of transactions conducted on behalf of a person discharging managerial responsibilities within an Issuer or on behalf of persons closely associated with them is required when transactions are made on their behalf in relation to:

- (a) bonds and shares of the said Issuer admitted to trading on a regulated market;
- (b) derivatives linked to the shares of the said Issuer; or
- (c) other financial instruments linked to the shares of the said Issuer.

(a), (b) and (c) above are henceforth referred to as '*the financial instruments*'.

3.2 Who is exempt from notification?

In terms of regulation 8 sub-regulation 2 (a) of L.N. 108 of 2005, persons discharging managerial responsibilities within an Issuer or persons closely associated to them, **are exempt** from notifying the MFSA of transactions conducted on their behalf in *the financial instruments* where the total amount of the transactions within a calendar year is below Lm 2400.

For the purposes described above, sub regulation 4 of the said regulation states that the total amount of transactions shall be computed by summing up the transactions conducted on the own account of persons discharging managerial responsibilities within an Issuer together with the transactions conducted on the account of persons closely associated with such persons.

3.3 Where not exempt, how and when should notification to the MFSA be carried out?

If notification is required, the provisions of regulation 8 (1) of L.N. 108 of 2005 apply. In this regard, the MFSA should be notified within five working days of the existence of any transactions in *the financial instruments* conducted on behalf of persons discharging managerial responsibilities within the Issuer or persons closely associated to them. **The responsibility to make such notification is that of the person on whose behalf the transaction was made. This notwithstanding, the MFSA expects Company Secretaries to assist such persons in meeting their PFMA notification responsibilities.**

The notification by persons discharging managerial responsibilities or persons closely associated to them must **STRICTLY** be made in the form set out in Schedule I of L.N. 108 of 2005. **The MFSA shall not accept any notifications made in a form other than that in Schedule I of L.N. 108 of 2005. Moreover, incomplete or incorrect notifications will need to be re-submitted.** Electronic copies of Schedule I of L.N. 108 of 2005 may be retrieved from the MFSA's web-page.

Persons in breach of the notification requirements may be subject to a fine sanctioned by the MFSA.

Whilst we trust the above clarifies any uncertainties which Company Secretaries and persons discharging managerial responsibilities might have had with respect to the PFMA notification requirements, 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