

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

The EU Markets in Financial Instruments Directive ('MiFID')

Feedback Statement further to Industry Responses to MFSA Circular 2nd May 2007

17th July 2007

1.0 Background

On the 2nd May 2007, MFSA issued a circular entitled "*Application of Investment Services Rules to Certain Investment Services Licence Holders*". This Circular aimed to indicate which of the Standard Licence Conditions contained in Section 2 ("Conduct of Business") of the new draft Investment Services Rules would apply to Fund Managers and Custodians. Such Licence Holders were requested to assess the contents of this circular in the light of their current business operations and to inform the MFSA should they require further clarifications or should they envisage any difficulties in applying the requirements of the circular.

The MFSA received comments from two Fund Managers. An outline of the main comments received and the MFSA's position in relation thereto, is provided in Section 2.0.

Section 3 of this Feedback Statement provides a revised list (with respect to that contained in our circular of the 2nd May) of the Conduct of Business Rules which would be applicable to Fund Managers.

2.0 Main Comments Received and MFSA's position

[2.1] Client Classification Requirements – SLCs 2.02 – 2.12

[a] Industry Comments: Clarification was requested as to whether a Fund Manager providing [i] nominee/transfer agency services to account holders of units in locally based collective investment schemes and [ii] transfer agency services to clients holding units in funds which are not managed by the said Fund Manager would still be required to classify such clients in terms of SLCs 2.02 to 2.12, given that the Fund Manager does not receive orders for subscribing into the collective investment schemes directly from clients, but mainly through other licensed intermediaries.

MFSA Remarks: Such Fund Managers would not be required to carry out a client classification exercise in terms of SLC 2.02 to 2.12 on the basis of the fact that Rule 2.03 (transposing Article 8(1) of Commission Directive 2006/73/EC ('the Implementing Directive')) refers to "investment services". This term is defined in the

Markets in Financial Instruments Directive (MiFID) referring only to those services listed in Section A of Annex I to this Directive, which does not include nominee/transfer agency services.

(b) Industry Comment: A Fund Manager who receives from other licensed intermediaries, orders to issue/redeem units the collective investment schemes which it manages, is entitled to rely on the client classification exercise carried out by the licensed intermediary.

MFSA Remarks: MFSA would like to clarify that the client classification exercise needs to be carried out by the Licence Holder providing an investment service to a client. Hence, while it is correct to state that the Fund Manager is entitled to rely on the client classification made by the licensed intermediary from which the order to issue/redeem units on behalf of a client originates, the Fund Manager is expected to carry out a client classification exercise with respect to clients which approach it directly to purchase/redeem units in any of the funds which it manages.

[2.2] Best Execution Obligations - SLCs 2.54-2.71

Industry Comment: MFSA was requested to clarify whether the best execution requirements in SLCs 2.54 to 2.71 would apply to fund management companies with respect to the purchase/redemption of units in a collective investment schemes. Furthermore, MFSA was requested to confirm that with respect to trades done by the Manager on behalf of the collective investment scheme which it manages, the execution policy approved by the Board of Directors of the Fund would be sufficient and that the consent of the unit-holders in the Funds is not required.

MFSA remarks: With respect the purchase and redemption of units, the Fund Manager will be expected to comply with the procedures laid out in the respective fund's prospectus for this purpose. Regarding trades executed by the Fund Manager on behalf of the collective investment scheme, MFSA confirms that the execution policy approved by the Board of Directors of the Fund would be sufficient and that the consent of the unit-holders in the Funds is not required.

[2.3] Client Disclosure Requirements - SLC2.28

Industry Comment: MFSA was requested to confirm whether a Fund Manager would satisfy the requirements of SLC 2.28 relating to the general information which should be disclosed to a retail client or a potential retail client, if it includes the details required by this SLC in the prospectus of a collective investment scheme which it manages.

MFSA Remarks: MFSA confirms that the above understanding is correct.

[2.4] Client Reporting - SLC2.52

[a] Industry Comment: MFSA was requested to confirm whether the submission of a valuation twice a year showing the client's holding and its value at a point in time suffices in the case of funds.

MFSA Remarks: MFSA confirms that this understanding is correct.

[2.5] Record Keeping – SLC 2.83

Industry Comment: MFSA was requested to clarify the applicability of Articles 7 and 8 of Commission Regulation 1287/2006 ('the Implementing Regulation') as referred to in SLC 2.83 with respect to Fund Managers.

MFSA Remarks: MFSA clarifies that the requirements of Articles 7 and 8 of the Implementing Regulation would, in the case of Fund Managers, be applied only insofar as these can be applied to such entities.

[2.6] Complaints Handling – SLC 2.117

Industry Comment: MFSA was requested to clarify whether any time limits would apply to the processing of client complaints by Licence Holders given that the *current* version of this SLC establishes certain time limits for this purpose.

MFSA Remarks: MFSA intends issuing a Guidance Note relating to Complaints Handling to further clarify SLC 2.117. The time limits being suggested in this Guidance Note will be the ones currently applicable. However, MFSA would like to emphasize that the purpose of Guidance Notes is merely to explain further the requirements contained in the Investment Services Rules. Accordingly, Licence Holders are free to establish their own time limits with respect to complaints handling as long as these limits "*ensure the prompt handling of complaints received from retail clients or potential retail clients*" as is required by SLC 2.117.

[2.7] Provisions Applicable to Licence Holders whose Staff Promote and Sell Investment Products – SLC 2.118 (iii)

Industry Comment: A Licence Holder commented that this SLC should not apply to Fund Managers

MFSA Remarks: MFSA considers that SLC 2.118 (iii) would only apply to Fund Managers which deal directly with clients in order to sell units in the funds which they manage. In this regard, unless the conditions of SLC 2.25 are satisfied, employees of the Fund Manager are still required to carry out an appropriateness test with respect to clients who approach the Fund Manager for purchase of units in collective investment schemes which are managed by the Fund Manager itself.

3.0 Conduct of Business Rules Applicable to Fund Managers and Custodians.

Further to the comments received in reply to our circular of the 2nd May, 2007, MFSA has reconsidered the applicability of certain Rules contained in Section 2 of the Investment Services Rules to Fund Managers. In this regard, MFSA would like to clarify that SLCS 2.40 to 2.45 relating to Client Reporting and SLCs 2.72 to 2.81 relating to Client Order Handling rules should not apply to Fund Managers on the basis that these aspects of the Fund Managers' operations are ordinarily governed by the relative provisions in the prospectus of the collective investment schemes managed by such Fund Managers.

The following is a revised list of the applicable conduct of business rules which apply to Fund Managers and Custodians:

[A] Fund Managers and Custodians which are not licensed to provide any of the services listed in Section A of Annex 1 of the MiFID ('MIFID services') but are only licensed to provide custody or management services with or without the provision of nominee services for investors, are required to comply with the requirements included under the following sub-titles of Section 2 of the Rules entitled 'Conduct of Business':

- General
- Client Reporting : Statement of Client Financial Instruments or Client Money (where applicable)
- Record keeping
- Safeguarding of Client Assets (where applicable)
- Conflicts of Interests
- Staff Dealing
- Provision of Services through the Medium of Another Licence Holder
- Conduct of Business Rules for Licence Holders Producing and Disseminating Investment Research (where applicable)
- Conditions applicable to the provision of information
- Complaints Handling

[B] Fund Managers whose staff may be involved in the sale and promotion of funds managed by the said fund managers and in the receipt of orders directly from clients (not through a licensed intermediary) for subscribing to units in the funds concerned are also expected to comply with the following sub-titles of Section 2 in addition to the sub-titles indicated above:

- Client Classification
- Client Profile Requirements : relating to the Assessment of Appropriateness
- Client Disclosure Requirements
- Provisions applicable to Licence Holders Whose Staff Promote and Sell Investment Product
- Transactions Executed with Eligible Counterparties

[C] Fund Managers which are also licensed to provide a MiFID service (such as portfolio management and/or investment advice) are expected to comply with all the sub-titles of Section 2 of the Investment Services Rules.

Contacts

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