

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

NOTICE

Professional Indemnity Insurance for Investment Services Licence Holders

The MFSA has reviewed its professional indemnity insurance (“PII”) regulatory requirement for investment services providers licensed in terms of the Investment Services Act, 1994. Such review was considered necessary due to a number of factors, including in particular, market developments which led to difficulties being faced by Licence Holders seeking to renew cover at feasible terms. In carrying out its review, the MFSA has also taken into account the approach adopted by European securities regulators in respect of PII.

The following is a description of the revised regulatory requirements which are now applicable to the various categories of Investment Services Licence Holders, and which will in due course be reflected in amendments to the MFSA’s Investment Services Guidelines:

Category 1a, 2, and 3 Investment Services Licence Holders:

The above categories of Licence Holders are no longer subject to a mandatory PII requirement provided they comply with the applicable financial resources and reporting requirements set by the MFSA in terms of their investment services licence conditions. The current financial resources and reporting requirements are shortly to be revised to conform with the EU Capital Adequacy Directive (“CAD”) with which such Licence Holders will be required to comply as from the reporting date of 31st March, 2004 (where applicable, i.e. for those Licence Holders having a financial year end of 31st December and subject to quarterly reporting) onwards. The MFSA intends publishing its revised financial resources and reporting requirements for investment services licence holders in accordance with CAD before the end of 2003 and a period of parallel reporting using CAD financial returns and the current returns will be requested prior enforcement of the revised financial resources requirements.

The decision whether or not to bind PII cover and the conditions of such cover, will be left to the discretion of the Licence Holders.

In those cases where the Licence Holder is an insurance principal, agent or broker licensed in terms of the Investment Services Act, 1994 solely in respect of its unit-linked business, no mandatory PII requirement will apply in terms of the Licence Holder’s Investment Services Licence. This is without prejudice to any applicable insurance requirements stipulated in terms of such companies’ insurance authorisation/enrolment.

The situation as regards banks holding an investment services licence which are currently exempt from the mandatory PII requirement in terms of the Investment Services Guidelines, will remain unchanged.

Category 1b Investment Services Licence Holders:

Category 1b Licence Holders are to be granted the option to either:

- (a) comply with the financial resources and reporting requirements applicable to Category 1a Licence Holders; OR
- (b) maintain PII in accordance with the current indemnity requirements stipulated in the Investment Services Guidelines. The MFSA reserves the right to increase such minimum indemnity limits in due course. Moreover, the current prescriptive PII cover requirements in the Guidelines are to be simplified to require as a minimum, cover in respect of the following:

'Legal liability in consequence of any negligent act, error or omission in the conduct of the Licence Holder's business by the Licence Holder or any person employed by it or otherwise acting for it, including consultants under a contract for service with the Licence Holder. The cover shall extend to all territories from, in or to which Investment Services are provided and shall include dishonest, fraudulent, criminal or malicious act, error or omission of any person at any time employed by the Licence Holder, or otherwise acting for it, including consultants under a contract for service with the Licence Holder'.

Category 4 Investment Services Licence Holders (CIS Custodians):

Given the solvency requirements applicable to Category 4 Licence Holders, no mandatory PII requirement is to apply and this will be left up to the discretion of the Licence Holder.

Category 5 Investment Services Licence Holders:

The current situation where such Licence Holders may either be covered for PII by their insurance principal or maintain a minimum net asset requirement of Lm10,000 is to be maintained, subject that the PII indemnity limit is to be left to the discretion of the principal and the prescriptive cover in the Guidelines, simplified in a similar manner to that proposed for Category 1b Licence Holders opting for PII.

In light of the above, those Licence Holders falling under any of the above Categories for whom PII is now optional, will as from the date of this notice, not be required to renew existing policies or bind cover if this is currently outstanding.

27th October, 2003