

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

General notification directives
applicable to
Recognised Investment Exchanges

Effective: 7th April 2003

PART I- GENERAL

These directives are issued by the Malta Financial Services Authority (the “Authority”) in accordance with the provisions of Article 5 of the Financial Markets Act (the “Act”) to ensure that due notice of events and specified information is provided to the Authority for the proper fulfilment by the Authority of the regulatory functions prescribed in the Act in relation to Recognised Investment Exchanges. Failure by any Recognised Investment Exchange (“Exchange”) to provide the information indicated in these directives may result in the revocation of its Recognition Order issued by the Authority in terms of the Act.

1.0 Form and Method of Notification

- 1.1** Where an Exchange is required to give any notice or information to the Authority it must do so in writing.
- 1.2** Unless otherwise stated, any notification required from an Exchange must be delivered to the Authority by post, facsimile, electronic mail or any other conventional means of communication as may reasonably be required by the Authority.

2.0 Time of Notification

- 2.1** Where in these directives an Exchange is required to give any notice or information “immediately”, this shall be construed as being no later than two business days from the occurrence of any such event or such other period that may be indicated by the Authority from time to time.
- 2.2** Any notice or information required of an Exchange must be made so as to be received by the Authority no later than the end of the period stipulated or implied for the notification thereof.

3.0 Change in notification details

Any change in the postal address, telephone number, fax number, e-mail address or any other contact details in relation to an Exchange must be notified immediately to the Authority.

4.0 Waiver of directives

- 4.1** The Authority may, on the application or with the consent of an Exchange, direct that any notification directive is not to apply to such Exchange or is to apply with any modifications as may be specified in such waiver.
- 4.2** Before granting any such waiver or modification, the Authority must be satisfied that:
- (a) compliance by the Exchange with any such directive, or with such directive as unmodified, would be unduly burdensome or would not achieve the purpose for which any such directive was made;
 - (b) the waiver or modification would not result in undue risk to persons whose interests such directive is designed to protect.
- 4.3** Any application made to the Authority by an Exchange for the waiver or modification of any directive must be made formally and in writing, setting out:
- (a) the particulars of the waiver or modification requested, and
 - (b) the reasons which, in the opinion of the applicant, justify the application.
- 4.4** The Authority may request from the Exchange whatever supplementary information it may require prior to granting any waiver of a directive in relation to that Exchange, which information must be provided within a reasonable time.
- 4.5** Any waiver or modification granted by the Authority shall be notified to the Exchange in writing. The Authority may, at its sole discretion, amend, alter or revoke any such waiver or modification by due notification to the relevant Exchange in writing.

PART II- NOTIFICATION REQUIREMENTS

5.0 General

5.1 The Authority shall be informed of any material information concerning the Exchange, its management or its operation, as soon as the Exchange becomes aware of that information.

5.2 An Exchange shall submit monthly returns which shall contain a summary of the main activities of the Exchange for the said month and any additional information which the Authority may from time to time require. Monthly returns shall be submitted within two weeks of the end of the month concerned.

Monthly returns shall include the following details, where applicable:

- (a) An overview of market conditions during the period.
- (b) A list of new Members/Traders admitted to the trading facilities of the Exchange during the period.
- (c) A list of those Traders who have been suspended from/re-admitted to trading by the Exchange during the period.
- (d) A list of securities granted a listing or admitted to trading during the period.
- (e) A list of securities de-listed from the Exchange or whose trading has been suspended, during the period.
- (f) Details of Company Announcements issued by listed companies during the period.
- (g) Details of notices issued by the Exchange during the period.
- (h) Details of any investigations of transactions effected on the Exchange, which have been undertaken by the Exchange during the period and the outcome or status of such investigations.
- (i) Details of companies licensed to provide stockbroking services in terms of a Category 2 Investment Services Licence which have sold securities held on their own account during the period, including details of the holding sold, the date of when it was originally purchased and the date when this was sold.

5.3 The Exchange shall submit a Certificate of Compliance, in the form set out in Schedule A, to the Authority for each six month period following the issue of the

Recognition Order. The Certificate of Compliance shall be signed by the Compliance Officer and two members of the governing body of the Exchange, being the board of directors or any similar governing body.

Where there have been breaches of the Financial Markets Act, and or the Regulations or directives issued under the Act, the Exchange is required to include a statement regarding such breaches in its Certificate of Compliance.

6.0 Constitutional Documents

6.1 Where an Exchange is to circulate any notice or other document proposing any amendment to its constitutional documents or directives to any group or class of persons which has the power to make that amendment or whose consent or approval is required before it may be made, notice of such proposed amendment must be given immediately to the Authority, giving the following information:

- (a) details of the proposed amendments;
- (b) the reasons for the proposal; and
- (c) a description of the group or class of persons to whom the proposal is to be circulated.

6.2 Once the amendment proposed in 6.1 is duly approved, the Exchange must immediately provide the Authority with written particulars of that event, of the amendment and of the date on which it is to become or became effective.

7.0 Rules/Bye-Laws and default rules

Where an Exchange proposes to amend, substitute or revoke its rules/bye-laws or its default rules or any part of them, the prior approval of the Authority must be obtained for the validity of any such amendment, substitution or revocation. In satisfaction of this requirement, the Exchange shall submit any such amendment, substitution or revocation to the Authority for its consideration, together with the following information:

- (a) details of the proposed amendment, substitution or revocation;
- (b) the reasons for the proposed amendment, substitution or revocation; and
- (c) a draft copy of the bye-laws or default rules of the Exchange reflecting such amendment, substitution or revocation.

8.0 Capital and Shareholding

- 8.1** An Exchange shall immediately notify the Authority of any change in the amount or composition of the capital of the Exchange.
- 8.2** No person shall acquire a direct or indirect holding in an Exchange which represents ten per cent or more of the share capital issued by such body or of the voting rights attaching to such share capital or which makes it possible to exercise a significant influence over the management of the Exchange (“qualifying shareholding”) or increase such qualifying shareholding so that the proportion of the voting rights or of the share capital held by him in the Exchange reaches or exceeds 20 per cent, 33 per cent or 50 per cent unless the Authority has been notified of that intention by such person or by the relevant Exchange and the Authority has approved the acquisition of or increase in such qualifying shareholding.

9.0 Officers

- 9.1** For the purposes of this section, an ‘officer’ shall be interpreted to mean a director, partner, chief executive, senior manager, secretary or any other person forming part of the governing body of an Exchange, charged with the representation of an Exchange or effectively acting in such capacity, whether formally appointed or not.
- 9.2** Where an Exchange proposes to appoint or elect an officer, the prior approval of the Authority shall be required. In satisfaction of this requirement the Exchange must submit to the Authority a duly completed and signed Personal Questionnaire in the form set out in Schedule B to these directives.
- 9.3** Where any officer of an Exchange has resigned or is removed or disqualified from such office, the Exchange must immediately provide the Authority with notice of any such event, providing that person’s full name and surname and the reasons for such resignation, removal or disqualification.
- 9.4** Where an officer of an Exchange:
- (a) is the subject of disciplinary action relating to his alleged misconduct,
 - (b) resigns as a result of an investigation into his alleged misconduct, or
 - (c) is dismissed for reasons related to misconduct,
- that Exchange must immediately give to the Authority notice of:

- (i) the name of the officer;
- (ii) details of the acts or alleged acts of misconduct conducted by that officer; and
- (iii) details of any disciplinary action which has been or is proposed to be taken by that Exchange in relation to that officer.

10.0 Committee

10.1 Where the governing body of an Exchange delegates any of its functions to a committee, or appoints a committee to manage or oversee the carrying out of any of its functions, the Exchange must immediately notify the Authority of that event and give the Authority the following information:

- (a) the names of the members of that committee; and
- (b) the terms of reference of that committee (including a description of any powers delegated to that committee and any conditions or limitations placed on the exercise of those powers).

10.2 Where:

- (a) there is any change in the composition or the terms of reference of any committee referred to in 10.1 above; or
- (b) any such committee is dissolved;

the Exchange must immediately notify the Authority of that event, giving particulars of any change referred to in (a), where applicable.

10.3 The delegation of any function by an Exchange to a committee shall not affect any obligation or responsibility imposed upon the Exchange by the Act or otherwise.

11.0 Arrangements for fulfillment of functions

11.1 Where an Exchange proposes to make any arrangements for any of its functions to be performed on its behalf by another person, the prior approval of the Authority must be obtained. In this respect the Exchange's request for approval shall contain the following information:

- (a) the reasons for the proposed arrangement;
- (b) the reasons why, in its opinion, it is satisfied that it will continue to satisfy the

recognition requirements once the arrangement is in place;

- (c) where the arrangement is to be offered on the basis of a written invitation to tender, a copy of that invitation to tender; and
- (d) where the arrangement is to be formulated into a written agreement, a draft copy of that agreement.

11.2 An Exchange must immediately give the Authority notice where it makes or proposes to make any arrangement to perform any function on behalf of another Exchange.

12.0 Fees

An Exchange must provide the Authority with a summary of:

- (a) any proposal to change the fees or charges levied by the Exchange for services provided, at the same time as the proposal is communicated to the persons concerned; and
- (b) any such change, no later than the date when it is published or notified to the persons concerned.

13.0 Complaints and Breaches

13.1 The Exchange shall hold a register of the complaints arising in connection with the performance by the Exchange of any of its functions, or its failure to perform any such function.

13.2 Where the investigation of any complaint arising in connection with the performance by an Exchange of any of its functions, or its failure to perform any such functions is conducted pursuant to paragraph 10 of the Schedule to the Recognised Investment Exchange (Recognition Requirements) Regulations 2003, the Exchange must immediately notify the Authority of any such event. Upon completion of any such investigation, the Exchange shall immediately provide the Authority with a copy of the report containing, where applicable, a statement of any recommendation made.

13.3 The Exchange shall keep a log of all of its breaches of the Act, and or the Regulations or directives issued thereunder. The Exchange shall notify the Authority of all such breaches as soon as the Exchange becomes aware of the breach.

13.4 The complaints register and the breaches log shall contain the following information:

- (a) Date of complaint or breach;
- (b) Short description of the complaint or breach; and
- (c) The date and manner in which the complaint or breach was addressed or resolved.

14.0 Dissolution and insolvency events

On:

- (a) the dissolution of an Exchange (or the commencement of any similar or analogous proceedings under the law of any foreign jurisdiction); or
- (b) the appointment of an Official Receiver, provisional administrator or liquidator in relation to an Exchange (or any similar or analogous appointment under the laws of any foreign jurisdiction), where relevant; or
- (c) the making of a compromise by an Exchange with its creditors (or any similar or analogous procedure under the laws of any foreign jurisdiction);

that Exchange must, on the day of occurrence of any of the above-mentioned events, give the Authority notice, together with any supplementary information that may be required by the Authority in this regard.

15.0 Legal Action

15.1 If any civil action is instituted against an Exchange, it must, subject to 15.2 below, immediately provide the Authority with:

- (a) the name of the claimant;
- (b) particulars of the claim;
- (c) the amount of damages and any other remedy sought by the claimant; and
- (d) particulars of any allegation that any act or omission of the Exchange was in bad faith.

15.2 The Exchange is not required to comply with the provisions of paragraph 15.1 above where the action relates to a money claim for a sum of Lm2,500 or less; and

- (a) where the action would not have a significant adverse effect on the reputation

and standing of that Exchange, if such action were successful; or

- (b) such action does not relate to the oversight by that Exchange of compliance by subject persons with the rules or bye-laws issued by the Exchange.

16.0 Products, services and normal hours of trading

16.1 Where an Exchange proposes to admit to trading (or cease to admit to trading) by means of its facilities:

- (a) an instrument (other than a security or an option in relation to a security); or
- (b) a type of security or a type of option in relation to a security;

it must give the Authority notice of that event and the information specified in 16.2 hereunder, at the same time as that proposal is first formally communicated to its members or shareholders (or any group or class of them).

16.2 The following information is specified for the purposes of 16.1:

- (a) a description of the instrument to which the proposal relates; and
- (b) where that instrument is a derivative, the proposed terms of that derivative.

16.3 Where:

- (a) an Exchange proposes to amend the standard terms of any derivative admitted to trading by means of its facilities; or
- (b) an Exchange proposes to amend the standard terms relating to the provision of clearing services for any derivative in respect of which it provides clearing services;

it must give the Authority notice of that event, and written particulars of those proposed amendments, at the same time as that proposal is first formally communicated to its members or shareholders (or any group or class of them).

16.4 Where an Exchange proposes to make (or to cease to make) arrangements for the safeguarding and administration of assets belonging to any other person (other than an undertaking in the same group of that Exchange), it must give the Authority notice of that event, and the information specified for the purposes of this directive in paragraph (16.5) below, at the same time as that proposal is first formally communicated to its members or shareholders (or any group or class of them).

16.5 The following information is specified for the purposes of 16.4 above:

- (a) a description of the assets (or types of assets) to which the proposal relates; and
- (b) the date or dates on which arrangements referred to in 16.4 above will be made (or cease to be made).

16.6 Where an Exchange proposes to change its normal hours of operation, it must give the Authority notice of that proposal, and particulars of, and the reasons for, the actions proposed, at the same time as the proposal is first formally communicated to its members or shareholders, or any group or class of them.

16.7 Where an Exchange receives an application for the listing of a security or where it grants a listing to a security, it is required to notify the Authority immediately.

17.0 Suspension of services and inability to operate facilities

17.1 Where, for any reason, an Exchange suspends trading in any derivative (other than an option in relation to a security), in any security or in any option in relation to a security, it must, on the day of suspension, give the Authority notice of that event, particulars of that derivative, security or option in relation to a security, as the case may be, and the reasons for the action taken.

17.2 Where an Exchange suspends any arrangements it makes for the safeguarding and administration of any type of asset belonging to users of the facilities of that Exchange (other than an undertaking in the same group of that Exchange) it must, on the day of the suspension of such arrangement, give the Authority notice of that event, particulars of the type of asset and the reasons for the action taken.

17.3 Where, because of the occurrence of any event or circumstances, an Exchange is unable to operate any of its facilities within its normal hours of operation it must, on the day of the occurrence of that event, give the Authority notice of that inability and inform the Authority:

- (a) which facility it is unable to operate;
- (b) what event or circumstance has caused it to become unable to operate that facility within those hours; and
- (c) what action, if any, it is taking or proposes to take to enable it to recommence operating that facility.

17.4 Where, because of the occurrence of any event or circumstances, an Exchange extends its hours of operation it must, on the day of such extension, give the Authority notice of that event, and inform the Authority:

- (a) what event or circumstance has caused it to do so;
- (b) the new hours of operation; and
- (c) the date on which it expects to revert to its normal hours of operation, if any.

18.0 Trade Ranges

18.1 Introduction of Trade/ Price Ranges

Where an Exchange proposes to introduce a system of trade/ price ranges in respect of securities or other instruments traded by means of its facilities, it must provide the Authority with a copy of such proposal which should include an explanation of the:

- (a) manner in which such trade/ price ranges will be calculated; and
- (b) criteria which will be used for the application of such trade/ price ranges.

18.2 Suspension or Removal of Trade/Price Ranges

Where an Exchange suspends or removes any of its applicable trade/price ranges in respect of securities or other instruments traded by means of its facilities, it must on the day of such suspension or removal give the Authority notice of that event, and inform the Authority of:

- (a) the name of the security or other instrument for which such trade/ price range was suspended/removed; and
- (b) the reason why such trade/price range was suspended/removed; and
- (c) when the Exchange has the intention of reintroducing the said trade/price range.

19.0 Information Technology Systems

19.1 Where an Exchange changes any of its recovery procedures in the event of a failure of any of its information technology systems, it must immediately give the Authority notice of that event, and a copy of the new plan.

19.2 Where any back-up information technology system of an Exchange fails in such a way that, if the main information technology system of that Exchange were also to fail, it would be unable to operate any of its facilities during its normal hours of operation, that Exchange must, on the occurrence of such event, give the Authority notice of that event, and inform the Authority of:

- (a) what action that Exchange is taking to restore the operation of the back-up information technology system; and
- (b) when it is expected that the operation of that system will be restored.

20.0 Inability to discharge functions

Where, because of the occurrence of any event or circumstances, an Exchange is unable to discharge any of its functions whatsoever, it must on the day of such occurrence give the Authority notice of its inability to discharge that function, and inform the Authority:

- (a) what event or circumstance has caused it to become unable to do so;
- (b) which of its functions it is unable to discharge; and
- (c) what action, if any, it is taking or proposes to take to deal with the situation and, in particular, to enable it to recommence discharging that function.

21.0 Disciplinary Action

21.1 Where an Exchange has taken any disciplinary action against any member or any employee of a member, in respect of a breach of its directives or bye-laws, that Exchange must immediately notify the Authority of that event, providing:

- (a) the name of the person concerned;
- (b) a brief description of the breach;
- (c) details of the disciplinary action taken by the Exchange; and
- (d) the Exchange's reasons for taking that disciplinary action.

21.2 Where an Exchange intends to suspend a member from trading or expel a person from membership, the Exchange shall, prior to notifying the applicable persons/entities,

notify the Authority of its decision.

- 21.3** Where an investigation pursuant to paragraph 9 (2) of the Schedule to the Recognised Investment Exchange (Recognition Requirements) Regulations, 2003 is conducted the Exchange must notify the Authority of any such event and of the conclusions reached by such investigation.

22.0 Criminal Offences and Regulatory prohibitions

In terms of clause 5 (2) (i) of the Schedule to the Recognised Investment Exchange (Recognition Requirements) Regulations, 2003, an Exchange is required to adopt appropriate measures to reduce the extent to which the facilities of the Recognised Investment Exchange can be used for a purpose connected with market abuse, insider dealing or any other criminal offence, and to facilitate their detection and monitor their incidence.

Where an Exchange has any evidence tending to suggest that any person may have committed, has committed, or is likely in the circumstances to commit:

- (a) a criminal offence under the Act or subordinate legislation made under the Act; or
- (b) a criminal offence under the Prevention of Money Laundering Act; or
- (c) any offence in terms of the Insider Dealing and Market Abuse Offences Act;

or where an Exchange has any evidence tending to suggest that any person may have carried on, has carried on, or is likely in the circumstances to carry on any regulated activity in Malta without the necessary licence or permission;

that Exchange must immediately give the Authority notice of any such event, providing full details of any such evidence in writing.

Such notice to the Authority should be made following the Exchange's analysis and consideration of all relevant information, where in its view, it has evidence to suggest any of the above-mentioned offences may have been committed, have been or are likely to be committed.

The Exchange shall notify the Authority on matters mentioned above by way of a written report which should include the following:

- (a) a brief description of the circumstances which triggered the Exchange's suspicion;

- (b) a description of the investigation conducted by the Exchange;
 - (c) the outcome of such investigation;
 - (d) the Exchange's opinion on the matter, in particular whether in its view, any person may have committed, has committed or is likely to commit any of the above-mentioned offences;
 - (e) if applicable, any action taken by the Exchange in this regard; and any other information which the Exchange considers relevant.
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