

Question & Answer Guide regarding the investigation into the selling of the La Valette Multi Manager Property Fund

Introduction

On 4th June 2012 and 4th September 2012 the Malta Financial Services Authority issued statements regarding the actions taken by the MFSA in connection with the selling of the La Valette Multi Manager Property Fund by Bank of Valletta. Following the publication of those statements a number of questions have been asked by various people on some aspects of the actions taken by the MFSA.

This document gathers together these questions, clarifies aspects of the actions taken by the MFSA, and so aims to be useful to all people who have an interest in the outcome of those actions. This Q+A may be updated in the light of developments as necessary.

1. Has the investigation into BOV finished?

The investigation relating to the sales practices adopted and employed by BOV and its subsidiaries when selling shares in the LVMMMPF was closed on 1st June 2012. The MFSA's investigation concluded that in various instances BOV had failed to act in the best interest of investors, as required in terms of the applicable regulatory framework. The statutory maximum fine of €203,150 was imposed on BOV for breaching licence conditions when selling units in the LVMMMPF to its clients. The MFSA also issued a Directive which requires BOV to co-operate with a client file review by an independent professional services firm.

2. What is the objective of the client file review?

The objective of the client file review, which is being carried out by an independent professional services firm at the offices of BOV, is to determine which advisory client investors, in the LVMMMPF, did not qualify as experienced investors as defined in the supplementary prospectus of the LVMMMPF.

3. Who is carrying out the file review?

The client file review is being carried out by Mazars, an international professional services firm which has offices in 69 different countries. The Malta office of Mazars is responsible for the client file review. This office is being assisted by experts from the UK and Paris office of the same professional services firm.

4. What was the process applied by the MFSA for the selection of the independent professional services firm? Why was Mazars selected?

The principal objective of the selection process was to ensure that the professional services firm chosen are sufficiently expert and truly independent. Following the announcement of the intention to appoint such a firm, several firms approached the MFSA offering their services and the MFSA approached a number of others. Some firms could not be selected due to potential conflicts of interest. The final selection was made on the basis of proposals received from the firms in response to terms of reference for the file review process set by the MFSA. Mazars' proposal offered the best combination of expertise, reasonable cost and independence.

5. Who will be paying for the client file review?

The MFSA has required BOV to pay all expenses relating to the client file review, which is being carried out by Mazars.

6. When will the file review be completed?

Mazars have been instructed by the MFSA to complete their review and make their report to the MFSA by the end of 2012. However, their ability to meet this deadline will also depend on the extent of cooperation by BOV.

7. What will be the outcome of the file review?

Mazars have been instructed by the MFSA to prepare a list of people who were not experienced investors when they made their investment in LVMMPF. These people should be entitled to compensation by BOV. The MFSA has also retained the right to raise with BOV any such additional investors (not included on the independent professional services firm's list) who it believes merit compensation.

8. Who will be entitled to compensation?

All those advisory client investors in the LVMMPF who did not qualify as experienced investors at the time when the investment was made should be entitled to compensation. In other words, those investors for whom either the client fact find or BOV's transaction history or other records held by BOV do not demonstrate qualification as an experienced investor as defined in the prospectus.

9. What is an advisory client? What is the difference between an advisory client and an execution only client?

An advisory client is someone who has paid for or received investment advice from a suitably authorised individual. Execution-only transactions are 'non-advised' transactions. There may have been some contact between the firm and the client prior to the investment being made, but this need not amount to advice. However, when the transaction is carried out there should be no doubt in the investor's mind regarding whether the transaction is on an execution only or advisory basis.

10. *I was an execution only client. Am I entitled to compensation?*

Mazars will be completing an initial review of all BOV client files for those people who invested in the LVMMMPF. Where the transaction has been characterised as an execution only transaction, Mazars will be reviewing the relevant paperwork and checking whether it has been properly completed. If the paperwork has not been properly completed, then the transaction **will not** be treated as being done on an execution only basis. The transaction will be treated as an advisory client transaction and an assessment will be made regarding whether the client is an experienced investor. If there is not sufficient information to show that the client was an experienced investor, then that client should be due compensation from BOV.

If the paperwork has been completed properly then the transaction will be treated as an execution only transaction. Part of the paperwork is the experienced investor declaration, which all investors are required to sign prior to investing. Where the experienced investor declaration has been correctly completed, the investors will have declared that they are experienced investors. They will accordingly not be entitled to compensation under the terms of the Directive issued by the MFSA.

11. *What is the amount of compensation?*

All investors who were not eligible to invest in the LVMMMPF as identified from the client file review shall be eligible for compensation of an amount of €1 per share less any compensation already received from BOV.

12. *Has BOV appealed against the MFSA Directive?*

Yes, BOV have appealed from the Directive which orders them to co-operate with a client file review and pay compensation to those advisory client investors who were not experienced investors when the investment was made. The appeal is currently being heard by the Financial Services Tribunal. BOV is still required to comply with the Directive until a decision is reached by the Financial Services Tribunal on the merit of BOV's appeal. BOV have also issued a statement making it clear that they will co-operate with the file review.

13. *I bought units in the fund through another intermediary. Is my file being reviewed by Mazars? Am I due compensation?*

The Directive issued by the MFSA relates only to BOV and sales to BOV clients by BOV. The only files being reviewed by Mazars are BOV client files. Anyone who bought through another intermediary may be able to make a claim against that firm if the investor was an advisory client and was not an experienced investor as defined in the prospectus. Any individual who believes that they are not an experienced investor but were an advisory client should make a claim firstly to the firm that sold them the units and if they do not accept the judgement of the firm they are free to make a complaint to the MFSA Consumer Complaints Manager.

14. *What if I disagree with the judgement of Mazars on my file?*

Mazars will be making a report to the MFSA. The final judgement on whether the individual is or is not an experienced investor will remain with the MFSA.

15. *Has the fund been closed as a result of the investigation?*

No. Technically speaking the LVMMMPF is still open for subscriptions (i.e. investors may still purchase units into the fund), but the possibility of further investments in the LVMMMPF is remote and consideration of this aspect is largely an academic exercise. In fact, Valletta Fund Services, in their role as administrator, has the right to reject any application for purchase of shares in the LVMMMPF. As BOV is now the holder of nearly 98% of the shares in LVMMMPF the MFSA would expect all applications at this stage to be refused.

16. *If BOV and VFM were fined for breaching the leverage restriction why is the prospectus still valid?*

BOV and VFM were fined respectively for **wrongly monitoring** and **wrongly applying** the investment restrictions found in the prospectus. The fines imposed on BOV and VFM therefore have no direct effect on the validity of the current prospectus issued by the Scheme.

17. *Why did the investigation take so long to finish?*

Where the MFSA is considering taking any regulatory action against a licence holder it is important that it does so only after obtaining sufficient facts to be sure that the breach of rules or other offence has actually been committed. Given the seriousness of the potential breaches in this case, the investigation process involved a long series of interviews and correspondence between the MFSA, BOV and other relevant parties including BOV employees and investors in LVMMMPF. This lengthy but vital process was necessary in order to collect the information required for the MFSA to make a properly informed decision.

Any proposal for regulatory action is also subject to rigorous scrutiny at the level of the MFSA Supervisory Council, which is composed of the Directors of the Regulatory Units within the MFSA and which was ultimately responsible for issuing the final decision on the LVMMMPF investigations.

18. *What is the definition of an experienced investor?*

The definition of an experienced investor was set out in the relevant prospectus and has changed during the life of the LVMMMPF. The definition will therefore depend upon the prospectus that was valid at the time of the investment. The December 2006 prospectus definition was:

Experienced investors are considered as persons having the expertise, experience and knowledge to be in a position to make their own investment decisions and understand the risks involved.

An investor must state the basis on which he/she satisfies this definition, either by confirming that he/she is:

1. a person who has worked in the financial services sector for at least one year in a professional position, or,

2. a person who has been active, for at least one year in a professional position, in the acquisition and/or disposal of real estate property funds and/or in securities linked to real estate property, or,
3. a person who within the past 5 years, carried out investment transactions amounting to at least a sum of or equivalent to USD50,000.

In case of joint Applicants, the Applicants must have either:

- (i) carried out separately, within the past 5 years, investment transactions amounting to at least a sum of or equivalent to USD50,000 in which case each joint holder has to meet, individually, the Experienced Investor criteria, or,
- (ii) carried out jointly, within the past 5 years, investment transactions amounting to at least a sum of or equivalent to USD50,000 in which case, **provided that** they are the same joint holders, the Experienced Investor criteria may be met jointly.

The following is a list of the abbreviations used in this Q+A.

Term	Abbreviation
Bank of Valletta plc	‘BOV’
La Valette Funds SICAV plc	‘the Scheme’
La Valette Multi Manager Property Fund	‘LVMMPPF’
Malta Financial Services Authority	‘MFSA’
Valletta Fund Management Limited	‘VFM’

Disclaimer: The MFSA seeks to ensure that the information in this document is correct, but it does not give any express or implied warranty as to its accuracy, nor does it accept any liability for errors or omissions.