

## First Notified AIF on MFSA list

On 21 July, the MFSA included the first NAIF in the List of Notified AIFs. The NAIF, Ventura SICAV plc was notified to the MFSA, and is managed by Abalone Asset Managers in terms of the Investment Services Act (List of Notified AIFs) Regulations (hereinafter referred to as 'the Regulations').

In terms of the Regulations, the Notified AIF can be established under any structure allowed under Maltese law and the AIFM will assume full responsibility for the Notified AIF and for the fulfilment of the obligations of the Notified AIF. EU/EEA AIFMs may submit a request to the MFSA for an AIF to be included in the List of Notified AIFs.

The MFSA has committed to include a proposed NAIF in the List of Notified AIFs within 10 working days from the submission of a complete notification pack. The applicable Rules, Regulations and templates are available for download from the MFSA website [[www.mfsa.com.mt](http://www.mfsa.com.mt)]

## Thematic Review of Market Conduct

In cooperation with the European Insurance and Occupational Pensions Authority (EIOPA), the MFSA has launched a thematic review of market conduct addressed at insurance undertakings operating in the unit-linked life insurance market.



The purpose of the review is to identify potential sources of consumer detriment stemming from business interlinkages between providers of asset management services and insurance undertakings and the extent to which the latter are affected by the existence of monetary incentives and remuneration received.

The thematic review focuses on three key issues:

- Existence and characteristics of monetary incentives and remuneration;
- How insurance undertakings address conflicts of interest;
- How insurance undertakings structure unit-linked life insurance products.

EIOPA is managing and coordinating this EU-wide exercise, which targets 60% of the unit-linked life insurance market in each participating country. Submissions from participating insurance undertakings will be received by the MFSA in September 2016 and will be provided to EIOPA in an anonymised format. The results of the thematic review will be published by EIOPA in early 2017.

Any queries on the above are to be addressed to the Conduct Supervisory Unit by email on [finpro@mfsa.com.mt](mailto:finpro@mfsa.com.mt).

### What's Inside:

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**| Assessment of Malta's AIF fund structuring environment | ESRB Risk Dashboard Overview**

## MFSa Feedback Statement on Insurance Rules implementing audit committee requirements

On the 31st May 2016, the MFSa has issued a Consultation Document on proposed Insurance Rules issued under the Insurance Business Act (Cap.403) transposing the new requirements set out in Article 39 of Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC, ("the Statutory Audit Directive"), which has been amended by Directive 2014/56/EU of 16 April 2014.

The purpose of the Consultation Document was to bring to the attention of authorised undertakings the new requirement found in Article 39 of the Statutory Audit Directive relating to the audit committee and applicable to "public-interest entities" as defined in Article 2 of the said Directive.

Further to the said Consultation Document, the MFSa has issued the amendments to [Chapter 6 on System of Governance](#), including a new [Annex II - Audit Committee](#), in Part B of the Insurance Rule, together with a [Feedback Statement](#) on the comments received in relation to the proposed amendments relating to the audit committee requirements.

Any queries are to be addressed to the Insurance and Pensions Supervision Unit by email on [ipsu@mfsa.com.mt](mailto:ipsu@mfsa.com.mt).

## Assessment of Malta's AIF fund structuring environment

*By Dr Isabelle Agius, Senior Manager, MFSa Regulatory Development Unit*

### Introduction

The transposition in Malta of the Alternative Investment Fund Managers Directive<sup>1</sup> ('AIFMD') strengthened the Maltese regulatory framework applicable to Alternative Investment Fund Managers ('AIFMs') and further reinforced the integrity of the financial system. Even though the AIFMD focussed on establishing a European framework aimed at regulating and supervising AIFMs, the Malta Financial Services Authority ('MFSa') went beyond the AIFMD and made provision for a structured framework for the regulation and supervision of Alternative Investment Funds ('AIFs'). Since July 2013, the authorisation and regulation of AIFs runs parallel with the authorisation and regulation of PIFs which were retained for *de minimis* AIFMs and third country managers. Furthermore, this specific product regulation enabled the MFSa to implement the Regulations (EU) No 345/2013 and 346/2013 on European venture capital funds and European social entrepreneurship funds respectively to the PIF and AIF regimes depending on whether the funds are managed by a full-scope AIFM or a *de minimis* AIFM.



The additional regulatory regime for AIFs further reinforced Malta's traditional dual layer of regulation regulating and supervising both service providers and collective investment schemes. Indeed, the transposition of the AIFMD in Malta effected the Investment Services Act<sup>2</sup> (the 'Act') which is the primary act regulating investment services providers and collective investment schemes, the regulations which are issued in terms of the Act and the Investment Services Rules which the Authority is empowered to issue for the better carrying out of the provisions of the Investment Services Act.

On 1 April 2016, the Authority launched of the Notified AIF ('NAIF') regime. This regime marks a clear departure from the MFSa's concept of AIFs as regulated and supervised products and aims at providing AIFMs with a solution to market AIFs within the European Union in the shortest timeframe possible. This article proposes to provide an overview of the salient features of the NAIF regime.

<sup>1</sup> Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers

<sup>2</sup> Cap. 370 – Laws of Malta

**Key facts for the establishment of a NAIF**

A NAIF can be established in Malta in terms of the Investment Services Act (List of Notified AIFs) Regulations, 2016 and the Investment Services Rules for Investment Services Providers (the 'Rules').

The fund manager establishing and managing the NAIF may either be a full-scope AIFM authorised in terms of the Investment Services Act to provide manage AIFs or alternatively an EU AIFM which is in possession of a management passport under Article 33 of the AIFMD.

On the other hand, the NAIF can be either open-ended or closed-ended and established in any form which is available under Maltese Law namely investment companies i.e. SICAV or INVCO, unit trusts, contractual funds or incorporated cells within an incorporated cell company. However, the NAIF regime will not be available to all collective investment schemes.

Self-managed AIFs, property funds, loan funds and funds which invest in instruments and assets other than financial instruments listed in Section C of Annex I of MiFID cannot be established as NAIFs. Furthermore, collective investment schemes which are already licenced in terms of the Investment Services Act cannot convert to the NAIF Regime.

The investor base for NAIFs is restricted to professional investors and/or qualifying investors. The AIFM is required to adhere to the promotional rules applicable in the jurisdiction(s) where the NAIF is being marketed.

**The notification process**

The AIFM must submit to the MFSa a notification pack which includes a notification form with the required accompanying documentation within 30 calendar days from the date of resolution of the governing body of the AIF approving the prospectus. The same process is applicable in the case of notification of sub-funds of NAIFs. The accompanying documentation consists of the following:

- a) a prospectus containing the minimum contents required and drafted in accordance with the templates provided; prescribed in the Rules and duly compiled having regard to the appropriate pro-forma template provided;
- b) a resolution by the governing body of the AIF certifying that the prospectus has the minimum contents required and that it has been drafted in accordance pro-forma template;
- c) a self-certification by the AIFM that, having regard to any delegate manager(s) or advisers it has in place, it has the necessary competence and experience to manage the AIF and monitor effectively any delegate;
- d) a joint declaration by the AIFM and the governing body of the AIF by which each undertakes responsibility for the AIF, including, inter alia, the obligations arising under the AIFMD;
- e) a declaration by the AIFM confirming that it has carried out the necessary due diligence with regard to the service providers of the AIF and the governing body of the AIF. This declaration must include a statement that the AIFM is satisfied with the outcome of this due diligence exercise.

The MFSa will be including the AIF in the List of Notified AIFs within 10 working days from the date of filing of a duly completed notification pack.

**Removal of the NAIF from the List of Notified AIFs**

The MFSa retains the discretion to remove the NAIF from the List of Notified AIFs. The Regulations further specify

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<sup>3</sup> Investment Company with Variable Share Capital

<sup>4</sup> Investment Company with Fixed Share Capital

<sup>5</sup> Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments

the following instances when the AIFM may request the Authority to remove a NAIF or a sub-fund of a NAIF from the List of Notified AIFs:

- a) upon expiration of the duration of the NAIF or its winding up;
- b) in any case where the custodian has given notice of termination under the custody agreement or is in liquidation or subject to bankruptcy proceedings or has had its licence to provide custody services in respect of NAIFs suspended or cancelled;
- c) in any case where the AIFM has given notice of termination or is in liquidation or subject to bankruptcy proceedings or has had its licence to act as an AIFM suspended or cancelled and an eligible replacement AIFM has not been appointed within thirty (30) days from notice of termination;
- d) in all other cases as may be specified in the agreement between the NAIF and the AIFM as grounds for requesting removal of the NAIF from the List of NAIFs; and
- e) in all other cases as may be specified in the custody agreement between the NAIF or the AIFM on behalf of the NAIF and the custodian as grounds for requesting removal of NAIF from the List of Notified AIFs.

Upon removal from the List of Notified AIFs, the AIF must cease trading other than for the purpose of winding down the operations of the AIF or sub-fund and the AIF or sub-fund must then be liquidated or otherwise terminated in accordance with the requirements of Maltese law.

### What's next?

All legislative texts, pro-forma templates and guidance notes have been finalised and are available for download from the Authority's website.

*This article was first published in the 2016 Guide to setting up an Alternative Investment Fund in Europe published by Global Fund Media.*

## ESRB Risk Dashboard Overview

### *Risk Dashboard June 2016*

The European Systemic Risk Board (ESRB) published its quarterly risk dashboard.

The ESRB was set up in 2010 with a macro prudential mandate to oversee the EU financial system and to prevent and mitigate systemic risk. The ESRB monitors and assesses risks in banks, insurers, asset managers, shadow banks, financial market infrastructures and other financial institutions and markets. In those instances where it identifies a risk, the ESRB can issue warnings and recommendations. Recommendations can be addressed to the Union as a whole or to Member States, European supervisory authorities or national supervisory authorities.

The ESRB risk dashboard consists of a set of quantitative and qualitative indicators of systemic risk in the EU financial system. This provides an overview of the interlinkages and composite measures of systemic risk, macro risk, credit risk, funding and liquidity, market risk, profitability and solvency and structural risk.

The risk dashboard issued in June 2016 reports a decrease in systemic risk at the end of the first quarter of 2016, following an increase in the beginning of the year. This is measured by means of an index, the Composite indicator of systemic stress (CISS) which looks at financial stress in the financial intermediaries sector, money markets, equity markets, bond markets and foreign exchange markets. Moreover, the risk appetite of market participants is increasing, with the global risk aversion indicator turning negative in the first quarter of 2016. With respect to macro risk, the ESRB Risk Dashboard indicates continued recovery whereas levels of debt continue to remain a source of vulnerability in several countries, both for the public and non-financial corporate sectors. Bank lending to

both households and the non-financial corporate sector also continued to recover gradually. The profitability of banks in the EU, as indicated by the average return on equity, has decreased for the third consecutive quarter in the beginning of 2016. The Risk Dashboard also reports continued growth in the size of the non-banking and non-insurance segments of the financial sector.

The full version of the ESRB Risk Dashboard may be accessed from the ESRB website <https://www.esrb.europa.eu/home/html/index.en.html> under Reports & Research.

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## European Supervisory Authorities Press Releases

### European Insurance and Occupational Pensions Authority (EIOPA)

04/07/2016 - [EIOPA consults on policy proposals regarding the implementation of the Insurance Distribution Directive](#)

06/07/2016 - [EIOPA advises on the development of an EU single market for personal pension products](#)

08/07/2016 - [EIOPA - Final release of the XBRL Tool for Undertakings](#)

### European Banking Authority (EBA)

01/07/2016 - [EBA clarifies use of 2016 EU-wide stress test results in the SREP process](#)

07/07/2016 - [EBA announces details of its 2016 transparency exercise](#)

11/07/2016 - [EBA publishes a report on the benchmarking of diversity practices at European Union Level](#)

12/07/2016 - [EBA updates on monitoring of Additional Tier 1 instruments](#)

15/07/2016 - [EBA notes progress in convergence of supervisory practices across the EU](#)

18/07/2016 - [EBA launches data collection to support the new prudential framework for investment firms](#)

21/07/2016 - [EBA consults public on the minimum requirement for own funds and eligible liabilities \(MREL\)](#)

21/07/2016 - [EBA announces timing for publication of 2016 EU-wide stress test results](#)

26/07/2016 - [EBA consults on the appropriate basis for the target level of resolution financing arrangements](#)

27/07/2016 - [EBA publishes guidelines on communication between supervisors and statutory auditors](#)

### European Securities and markets Authority (ESMA)

11/07/2016 - [ESMA publishes the final translated versions of the Guidelines on cross-selling practices](#)

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## MFSA Consultation Feedback Statements

18/07/2016 - [Feedback Statement issued further to Consultation on Insurance Rules implementing audit committee requirements](#)

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## MFSA Circulars

01/07/2016 - [Circular on the coming into force of the Alternative Performance Measures Guidelines](#)

05/07/2016 - [Circular to applicants for financial services authorisations](#)

- 06/07/2016 - [Circular regarding the MFSA Web Portal \("LH Portal"\)](#)
- 06/07/2016 - [Notice to Financial Services Licence Holders – FATF identifies jurisdictions with strategic deficiencies](#)
- 07/07/2016 - [Circular to Credit Institutions on EBA Q&A Updates](#)
- 08/07/2016 - [Circular - EIOPA consults on policy proposals regarding the implementation of the Insurance Distribution Directive](#)
- 11/07/2016 - [Solvency II Circular for Insurance and Reinsurance Undertakings](#)
- 15/07/2016 - [An update on MAR/MAD II in relation to MiFID II/MiFID requirements](#)
- 18/07/2016 - [Circular on the Implementation of the PRIIPs framework](#)
- 20/07/2016 - [IFRS 15: Revenue from Contracts with Customers - Issues for Consideration](#)
- 25/07/2016 - [Circular to the Financial Services Industry on the European Markets Infrastructure Regulation No 648/2012 \('EMIR/ the Regulation'\): Clearing Obligation](#)
- 29/07/2016 - [Circular addressed to Investment Firms and/or Applicants for an Investment Services Licence offering or intending to offer Financial Contracts for Difference \(CFDs\) and other speculative products](#)

## MFSA Warnings

- 29/07/2016 - [MFSA Warning addressed to the general public, namely to retail investors regarding the sale of speculative products](#)

Foreign warnings received by MFSA can be viewed on [MFSA Website / Announcements / Warnings](#)

## MFSA Licences - June 2016

### NEW LICENCES

#### Collective Investment Schemes

##### *Professional Investor Funds targeting Qualifying Investors*

- Collective Investment Scheme licence issued to **Replica SICAV plc**.
- Collective Investment Scheme licence issued to **EOS SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **Redhedge SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **Dalma Capital SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licences issued to **Magiston Funds SICAV plc** in respect of two sub-funds.
- Collective Investment Scheme licences issued to **Audentia Capital SICAV plc** in respect of three sub-funds.

##### *Recognised Fund Administrators*

- Certificate issued to **Kane LPI Solutions (Malta) Limited**.

## Pensions

### *Retirement Scheme*

- Recognition certificate issued to **STM Malta Contract Plan**.
- Recognition certificate issued to **ITC Occupational Retirement Scheme**.
- Recognition certificate issued to **ITC Personal Retirement Scheme**.
- Recognition certificate issued to **STM Malta (US) Protected Retirement Plan**.

### *Investment Manager*

- Recognition certificate issued to **Bastion Wealth Limited**.

### *Back office Administrator*

- **Dominion Fiduciary Services Limited** was granted exemption from requiring recognition as a Back Office Administrator.

## Company Service Providers

- Registration certificate issued to **ST Corporate and Advisory Services Limited**.
- Registration certificate issued to **Mazars Consulting Limited**.
- Registration certificate issued to **PiscoPartners Limited**.
- Registration certificate issued to **Mediterra MMXII Services Limited**.
- Registration certificate issued to **Gnosis Management Limited**.
- Registration certificate issued to **Risk Management Services (Malta) Limited**.

## Securitisation Vehicles

### *Notified Securitisation Vehicles*

- Acknowledgement issued to **Arkadia Securitisation SCC Limited**.
- Acknowledgement issued to **42Securities Limited**.
- Acknowledgement issued to **Primus Accumulator Limited**.

### *Cells*

- Acknowledgement issued to **Arkadia MNE Cell**.

## Insurance

### *Insurance Brokers*

- **Mulberry Insurance Brokers Limited** has been granted enrolment in the Brokers List.

**SURRENDERED LICENCES****Collective Investment Schemes***UCITS*

- Surrender of licences issued to **Celsius Global Funds SICAV plc** in respect of five sub-funds.

*Incorporated Cells*

- Surrender of licence issued to **Aros Bond Strategies SICAV IC plc**.
- Surrender of licence issued to **Nivesa Private Fund IC SICAV plc**.

*RICC*

- Surrender of licence issued to **Sei Private Invest Fund RICC Limited**.

**Investment Services**

- Surrender of Category 4A licence issued to **Deutsche Bank (Malta) Limited**.

**EXTENDED AND REVISED LICENCES****Investment Services**

- Extension of licence issued to **AQA Capital Limited** to include the provision of management services to Retail Clients.
- Extension of licence issued to **MZ Investment Services Limited** to provide additional investment services, namely nominee services, investment management and execution of orders.
- Revision of licence issued to **Temporis Investment Management Limited** to include the provision of management of investments to Professional Clients.
- Revision of licence issued to **Binary Investments (Europe) Limited** to include the provision of execution of orders to Retail Clients and Professional Clients (including Collective Investment Schemes).

**Registry of Companies - New Registrations – June 2016**

Companies	Partnerships
366	8



## Forthcoming Events

**October 3-4 - [FERMA - European Risk Seminar](#)**



Training by members of the ECC:

- [Malta International Training Centre](#)
- [Malta Institute of Accountants](#)
- [Institute of Financial Services](#)
- [Institute of Legal Studies](#)
- [Institute of Financial Services Practitioners](#)
- [Malta Institute of Management](#)
- [Castille Institute](#)
- [PricewaterhouseCoopers](#)
- [Malta College of Arts, Science and Technology \(MCAST\), Institute of Business & Commerce](#)
- [The Department of Banking & Finance, Faculty of Economics, Management & Accountancy, The University of Malta](#)

*Communications to be addressed to:  
The Secretary,  
Educational Consultative Council,  
MFSA,  
Notabile Road,  
Attard.*



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