

**MFSA**

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MALTA FINANCIAL SERVICES AUTHORITY

# **MFSA Guidance Note on Life Settlement Securities**

**10<sup>th</sup> October 2012**

## Purpose of this Guidance Note

In light of recent developments in the life settlement market and life settlement products, the Malta Financial Services Authority (MFSA) is issuing this Guidance Note to explain its position with regards to the listing of life settlement products on the European Wholesale Securities Market (EWSM) and to outline the salient information that the MFSA would expect to be included in a prospectus submitted for the MFSA's approval as part of the application for admissibility to listing of life settlement products on the EWSM.

## MFSA Position

Life settlement products enable policyholders to sell insurance to third parties. The creation of a secondary market for life insurance is designed to enhance the liquidity of the market for policy owners which should in turn assist in making the primary market more attractive.

Issuers seeking to attract investors for this type of investment are now able to list such products on the EWSM. However, due to the unique nature of the risks presented in this asset class and the complexity of such products, the MFSA is of the opinion that such products should not reach retail investors.

Investors need to be able to make an informed investment decision. Set out below is a broad description of the information that the MFSA would expect to be included in a prospectus in order to cover all material characteristics of life settlement products.

## Prospectus for Life Settlement Securities

A prospectus for life settlement products submitted for approval to the MFSA should include the following information:

- **Disclosure of information** – a prospectus for life settlement securities must set out all the information that investors and their professional consultants would need, and reasonably expect to find in the prospectus, to make an informed valuation of the rights and liabilities attaching to the securities. Such information should cover an issuer's assets and obligations. This should cover all the information that might be expected to have a reasonably material influence on the decision of an investor.
- **Disclosure of all party information** – there must be thorough transparency on all the parties involved in the transaction. This would not simply necessitate the name of the parties but also their roles and responsibilities within the structure. Any conflict of interests as well as material relationships which might have reasonable cause to effect the investments must be clearly identified in the prospectus.
- **Disclosure of Risk Factors** – the prospectus should include the risk factors associated with these type of products which may include (but not limited to) collateral pool credit risks, legal and regulatory risk, risks relating to payment structure and cash flow mechanics, operational and administrative risks.
- **Transparency** – the structure of the transaction must be clearly identifiable. This therefore necessitates that all payment structures and how funds will finally reach investors need to be fully disclosed. This also requires that there is an identifiable cash flow of the investment with a structured explanation of the methods by which payments

are effected to investors. This requires a clear outline of the underlying assets of the structure.

- **Warranty statement and relevant evaluations** – the prospectus must contain a statement to the effect that the investment being listed has a clear and enforceable insurable interest, thereby attesting the longevity and liquidity of the investment. All entities making a representation in the prospectus or an evaluation must be clearly disclosed. The methods used to arrive to any results or evaluations in the prospectus must be identified.

### **Additional requirements**

Due to the specific risk profile of life settlement products, the MFSA believes it is important to highlight that:

- Life settlement securities are intended solely for “professional investors” being investors who meet the criteria laid down in Annex II of the Directive on Markets in Financial Instruments 2004/39/EC (MiFID).
- Life settlement securities should **not** be offered, distributed or promoted in any manner to retail investors.

A statement to the effect that such investments are intended solely to professional investors and that they cannot be repackaged or sold to retail investors should be included in the front page of the prospectus submitted for approval.

Also the MFSA expects that the administrator takes on the responsibility to ensure that the conditions referred to above are adhered to.

### **Contacts**

Should you have any queries regarding the above, please do not hesitate to contact Mr. Mike Duignan, Director, Securities and Markets Supervision Unit, Tel: 0035625485540 - mduignan@mfsa.com.mt, or Dr. Michelle Mizzi Buontempo, Deputy Director, Securities and Markets Supervision Unit, Tel: 0035625485112 - mmizzibuontempo@mfsa.com.mt.