

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

**Guidance Note being issued by MFSA on draft Delegated
Regulation amending Regulation (EC) No. 809/2004**

21 June 2012

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A. Introduction

This Guidance Note shall apply to all securities listed on the European Wholesale Securities Market. The information contained herein aims to give interested persons an overview of the salient changes introduced by the Delegated Regulation which would be relevant to the wholesale market. While every effort has been made to avoid errors and omissions, this Guidance Note is purely informative and should not be treated as a substitute for reading the Delegated Regulation and obtaining professional legal advice.

On 2 April 2012, the European Commission published its draft Delegated Regulation to amend Regulation (EC) No. 809/2004 (Prospectus Regulation). The delegated Regulation is expected to enter into force on 1st July 2012. The purpose of this Guidance Note is to explain the MFSA's position regarding transitional provisions (PART A), to clarify the MFSA's position regarding Supplements (PART B) and to explain the main changes proposed by the European Commission relevant to wholesale non-equity securities (PART C).

The main changes proposed by the European Commission which are relevant to wholesale non-equity securities are the categorisation of information from the securities note schedules into three categories with the objective to clarify which information should be included in a Base Prospectus and which information is to be included in the Final Terms. Moreover, the draft Delegated Regulation details the information to be included in the Final Terms. A more detailed explanation of these changes is found in Part C of this Guidance Note.

B. Transitional Provisions

The draft Commission Delegated Regulation states that the new requirements it introduces should only apply to prospectuses which are to be approved by competent authorities on or after 1 July 2012, being the date on which this draft Regulation comes into effect. This means that Base Prospectuses approved before the 1 July 2012 deadline may continue to be used, supplemented and passported after 1 July 2012. Prospectuses drawn up after the 1 July 2012 and incorporating a Registration Document approved before 1 July 2012 will have to comply with the new requirements.

This part explains the position taken by the MFSA during the transitional period and sets out what type of documentation will be accepted and not accepted. The following sets out the type of Final Terms which will be accepted by the MFSA during the transitional period.

- The MFSA will be accepting Final Terms (relating to base prospectuses approved before 1 July 2012) which replicate information on the securities which is already included in the Base Prospectus.
- The MFSA will also be accepting Final Terms which do not include reference to non-applicable terms.

- In the case where a summary was voluntarily included in the Base Prospectus, the Final Terms will not be required to include a summary and a statement as described in Part C of this Guidance Note.
- The MFSA will not be requiring Final Terms to be translated according to the same translation requirements as the Base Prospectus.
- If the Base Prospectus approved before 1 July 2012 does not include general information which is now being categorised as Category B information, the MFSA will be accepting Final Terms including such information and will not be requesting a Supplement.

During the transitional period, the MFSA **will not** be accepting Final Terms which include information such as additional risk factors and/or language that supplements base conditions and/or amend or replace information in the Base Prospectus. Moreover, as has always been the case, a document that is essentially a series prospectus/securities note should never be submitted as Final Terms.

C. Supplements

As at the date of this Guidance Note, the MFSA's position on the issue of supplements is as follows:

A supplement may be submitted and the MFSA will not request a new prospectus for the following:

1. the introduction of a new product. In such cases however the MFSA will also take into consideration whether the introduction of a new product will result in an unusually large number of changes being made which could affect the comprehensibility of the prospectus as a whole;
2. the increase of the programme amount.

D. Summary of proposed changes

1. Base Prospectus

Categorisation of line items from the securities note schedules – Each line item in the securities note schedules to the Prospectus Regulation are categorised "Category A", "Category B" or "Category C". Such categories determine whether the information may be included in the final terms or whether it must be set out in the base prospectus.

Information categorised as 'A' should be included in the base prospectus at all times and cannot be left out for later insertion in the final terms. An example of such information is the

responsibility statement. The information regarding the person taking overall responsibility of the base prospectus should be included in the base prospectus.

Information categorised as 'B' means that the base prospectus should include all the general characteristics related to that information. Only the details which are not yet known at the time of approval of the base prospectus can be left blank for later insertion in the final terms. An example of such information is the description of the type and the class of the securities being offered and/or admitted to trading. In this case the base prospectus should determine the type of securities, for example, asset-backed securities / notes / derivatives and give a general description of each type of security. Specific information such as the details of the pool of assets backing the security may be included in the final terms if not known at the time of approval of the base prospectus.

Information categorised as 'C' means information which is not known at the time of approval of the base prospectus. This type of information should be inserted in the final terms. The base prospectus may contain a reserved space for such information. An example of such information is the ISIN or other such security identification code. The ISIN will be only known to the issuer when the specific securities are issued. Accordingly, such ISIN is expected to be indicated in the final terms.

Options - The base prospectus may give an array of possible options with regards to information categorised A, B or C. The applicable option may be indicated in the final terms by either replicating the information in the base prospectus or by referring to the relevant section of the base prospectus.

Others - The base prospectus should include a specimen of the final terms which has to be filled out for each individual issue.

- Where a supplement relates only to one or several specific issues, the right of investors to withdraw their acceptances will apply only to those issues and not to other offerings under the relevant base prospectus.

2. Final Terms:

The Final Terms attached to a base prospectus should only contain the following:

(a) the information classified as Category B & Category C (non-applicable items should be included and marked as not applicable)

(b) on a voluntary basis, any of the following additional information:

- i.) Example(s) of complex derivatives securities
- ii.) Additional provisions, not required by the relevant securities note, relating to the underlying
- iii.) Country(ies) where the offer(s) to the public takes place
- iv.) Country(ies) where admission to trading on the regulated market(s) is being sought
- v.) Country(ies) into which the relevant base prospectus has been notified

- vi.) Series Number
- vii.) Tranche Number

(c) any replication of, or reference to options already provided for in the base prospectus which are applicable to the individual issue.

The final terms **shall not** 1) amend or replace any information in the base prospectus and 2) replicate information in the base prospectus which is not replicated in terms of (c) above. Accordingly, consolidating the terms and conditions stated in the base prospectus and replicating such information in the final terms is not acceptable.

The Final Terms should feature a clear and prominent statement indicating:

- a. that the final terms have been prepared in terms of the Prospectus Directive and should be read in conjunction with the base prospectus and its supplement;
- b. where the base prospectus and supplement have been published;
- c. that a summary of the individual issue is annexed to the final terms.

Others –

- The final terms must be prepared in an easily analysable and comprehensible form. The final terms shall be presented in the form of a separate document or be included in the base prospectus. The final terms may include the signature of the legal representative of the issuer or the person responsible for the prospectus according to the relevant national law or the signature of both.
- Language - Where the base prospectus is translated in terms of the Prospectus Directive, the final terms of the individual issue shall be subject to the same translation requirements as the base prospectus.

A copy of the draft Delegated Regulation is available through the following link http://ec.europa.eu/internal_market/securities/docs/prospectus/20120330-delegated-regulation_en.pdf

E. 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: +35625485540 - mduignan@mfsa.com.mt , or Dr Michelle Mizzi Buontempo, Deputy Director, Securities and Markets Supervision Unit, Tel: +35625485112 - mmizzibuontempo@mfsa.com.mt .