

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

**MFSA Guidance Note –
Listing on the European
Wholesale Securities Market of
Securities backed by Unlisted
Funds**

26th June 2013

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1

European Wholesale Securities Market

The European Wholesale Securities Market (EWSM) is a “regulated market” as defined in Article 4(1), point 14 of the Directive on Markets in Financial Instruments (2004/39/EC) authorised and regulated by the Malta Financial Services Authority (“the Authority”). This market is intended for the following types of securities, the denomination per unit of which must be at least €100,000: Asset backed securities, Debt securities and Derivative securities.

Purpose of this Guidance Note

This guidance note is designed to explain the additional information requirements that would need to be met by issuers applying for admission to listing on the EWSM of notes which are backed by unlisted funds.

Structure of the transaction

The requirements set out below envisage a typical structure for such transactions, being a special purpose vehicle (SPV) which issues securities to investors and the proceeds from these notes would then be used to invest directly in identified unlisted funds or in securities linked to identified unlisted funds.

Content of the Prospectus

1. Applicable Disclosure Annexes

Commission Regulation (EC) No 809/2004 of the 29 April 2004, (hereinafter referred to as the “Regulation”) lays down principles to be observed when drawing up prospectuses together with the appropriate disclosure requirements.

It is the Authority’s view that the disclosure annexes of the Regulation which should be followed by prospective issuers in the scenario described under “Structure of the transaction” are:

- a. Annex VII of the Regulation to cover the information on the Issuer (i.e. the SPV);
- b. Annex XIII of the Regulation to cover the information on the notes;
- c. Annex VIII of the Regulation to cover information about the assets backing the securities and where such assets are linked to the performance or credit of other assets information on the latter. ;
- d. Annex I of the Regulation for every underlying identified fund which is an open-ended fund and the additional information identified below;
- e. Annex XV of the Regulation in relation to every underlying identified fund which is a closed-ended fund.

In respect to Annex I it is anticipated that only Building Blocks 1-7, 10, 14, 20 and 24 will be applicable to the underlying identified fund which is an open-ended fund however it is the

Issuer's responsibility to determine whether the information required by the remaining Building Blocks is pertinent to the issuer, to the offer or to the securities to which the prospectus relates.

2. Listing Conditions for securities backed by unlisted funds

Given the specific nature of these transactions the Authority is of the opinion that in order to provide the investors with all the information that they need to make their investment decision the prospectus should include the following information for each underlying fund:

- a. A description of the risks specific to the fund together with an analysis of the fund's investment policy;
- b. A comprehensive and meaningful analysis of the fund's investment portfolio.
For guidance purposes, the following should be provided:
 - an analysis by strategy, or by broad industrial or commercial sector and geographical area, as applicable; or
 - an analysis of the investments and financial instruments, distinguishing between securities which are listed and unlisted and traded on or off exchange in the case of derivative products; or
 - an analysis by currency type.
- c. A description of the fund's investment policy – hence an explanation of the investment goals and objectives of the fund together with the strategies adopted to meet these objectives;
- d. The borrowing, gearing and/or leverage limits for the fund - if there are no such limits, a statement to that effect should be included;
- e. Details of the rights represented by any fund units held by the Issuer;
- f. The procedure for the creation, issue and sale of fund units;
- g. The procedure and conditions for the repurchase, redemption and cancellation of fund units and details of the circumstances in which repurchase and redemption may be suspended;
- h. The method to be used for the determination of the creation, sale and issue prices and the repurchase, redemption and cancellation prices of the fund units and, in particular:
 - The valuation principles, method and frequency of the calculation of the net asset value including the name and address of the service provider to the fund which is responsible for the determination and calculation of the net asset value; and
 - Information concerning the charges relating to the sale or issue and the repurchase or redemption of fund units including, if applicable, any charges to switch from one sub-fund to another.

- i. The name and business address of the custodian charged with responsibility for the safekeeping and custody of the assets of the fund. Any such custodian must be a separate legal entity to the investment manager and any investment adviser. Such person must have suitable and relevant experience and expertise in the provision of custody services;
- j. Information concerning the nature, amount and the basis of calculation in respect of remuneration payable by the fund to the manager (or in the case of a self-managed fund, the investment committee), administrator, custodian, adviser and to third parties, and in respect of the reimbursement of costs by the fund to the manager, to the custodian and to third parties.

General requirements

Apart from the above mentioned disclosure requirements, issuers must also take into consideration the following:

- i. Those responsible for managing the investments must have adequate and appropriate experience. In this context, the prospectus should state that the investment manager is a regulated entity and that it has an appropriate level (at least US\$100 million) of assets under management;
- ii. There must be an adequate spread of investment risk. This should be stated in the prospectus;
- iii. The fund must be a passive investor and must not control or seek to control or be actively involved in the management of, any companies or business in which it invests;
- iv. If the fund is investing in fifty per cent (50%) or more of its assets in another fund, then the requirements mentioned above must be addressed in full in respect of that other fund.
- v. A statement to the effect that such investments are intended solely for professional investors and that they cannot be repackaged or sold to retail investors should be included on the front page of the prospectus submitted for approval.

Contacts

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