

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

**Consultation Document on CRD IV
for Investment Firms**

**Proposals for the Categorisation of
Investment Firms as “significant”**

[MFSA REF: 06-2014]

30 June 2014

Closing Date: 30 July 2014

Note: The documents circulated by the MFSA for the purpose of consultation are in draft form and consist of proposals. Accordingly these proposals are not binding and are subject to changes and revisions following representations received from Licence Holders and other involved parties. It is important that persons involved in the consultation bear these considerations in mind.

The guiding provisions of this Consultation Document are intended to apply for stand-alone investment firms and will not apply to credit institutions that provide investment services.

PROPOSALS ON THE CATEGORISATION OF INVESTMENT FIRMS AS “SIGNIFICANT”

1. PURPOSE

The MFSA is issuing for consultation the proposed amendments to Part BI (SLCs 1.55 – 1.58 inclusive) and changes to sections of Appendices 1B, 3, 4, and 10 of the Investment Services Rules for Investment Services Providers (‘the Rules’).

2. INTRODUCTION

Directive 2013/36/EU of the European Parliament and of the Council on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/E, ([“CRD IV”](#)) creates a distinction between investment firms that are considered “significant” and investment firms which are considered not to be “significant” for the purposes of the implementation of Articles 76, 88, 91 and 95. Similarly, this distinction is mirrored in Articles 6, 11 and 450 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 ([“CRR”](#))

3. METHODOLOGY APPLIED BY THE AUTHORITY

The Authority has considered the basis upon which it believes investment firms should be categorised as “significant” taking into account the guiding principles set out in the CRD IV

and the CRR, which refer to an investment firm's size, internal organisation and the nature, the scope and the complexity of its investment services activities.

In this regard, the Authority is proposing to adopt the criteria set out in the draft standard licence conditions 1.55 to 1.58 of Part BI of the Rules and the draft amendments to the Appendices contained in ANNEX I of this Consultation Document.

In order to establish an objective definition of a 'Significant Licence Holder', the Authority has reviewed the approach adopted by other EU regulatory bodies, while taking into account the particular nature of the investment services industry in Malta. A Licence Holder will fall within the definition of 'significant' if it meets one or more of the criteria stated below:

- the total balance sheet assets of the Licence Holder exceeds EUR 43 million; or
- the annual turnover relating to the investment services activities of the Licence Holder exceeds EUR 50 million; or
- the clients' money that the Licence Holder holds or controls exceeds EUR 100 million; or
- the clients' assets that the Licence Holder holds or controls in the course of, or connected with its investment services activities exceeds EUR 3 billion.

In arriving at the threshold figures for balance sheet assets and annual turnover, the Authority referred to the [EU Commission recommendation of 6 May 2003](#) concerning the definition of micro, small and medium sized enterprises (SMEs). The threshold levels for clients' money/assets were decided upon a statistical survey carried out by the Authority through the analysis of recent financial returns provided by the investment services industry in Malta and a comparative study of other regulatory regimes.

The following requirements shall apply to a 'Significant Licence Holder':

- limitations on the number of directorships an individual member of the Licence Holder's Management Body may hold [SLC 1.34 of Part B I of the Rules];
- the requirement to establish an independent nomination committee [SLC 1.38 of Part B I of the Rules];

- the requirement to establish an independent risk committee [SLC 1.46 of Part B I of the Rules];
- the application of the liquidity reporting by Category 3 Licence Holders on a solo and consolidated basis in terms of Part Six of the CRR;
- the remuneration disclosures in terms of article 450 of the CRR and Appendix 4 of the Rules shall also be made available in respect of members of the Management Body; and
- the requirement to establish an independent remuneration committee [Appendix 10 of the Rules].

The MFSA may, on a case by case basis, exempt a significant Licence Holder from the above requirements if it believes the rules that apply to a significant Licence Holder may be disproportionate to it, taking into account the size, internal organisation and the nature, the scope and the complexity of its Investment Services and activities.

On the other hand, the MFSA may on a case by case basis, treat a Licence Holder as significant notwithstanding that it does not exceed one or more of the thresholds referred to above, if in the opinion of the MFSA the application of some or all of the rules applicable to significant firms including provisions of the CRR would be appropriate to that Licence Holder.

The MFSA in exercising these discretions may also consider non-quantitative criteria including but not limited to, the complexity of its Investment Services and activities, market share, level of cross border activity and staff headcount of the Licence Holder and shall be guided by principles of investor protection and protection of market integrity.

Licence Holders should note that the requirements resulting from a firm being deemed “significant” are typically examples of best practice and firms may wish to adopt them where appropriate even when their adoption is not required by the Rules.

Any comments and feedback are to be addressed to the Securities and Markets Supervision Unit by e-mail on cbuttigieg@mfsa.com.mt. Interested parties are kindly requested to submit any comments in writing by not later than 30 July 2014.

ANNEX I

Part B I of the ISRISP

Significant Licence Holder

- 1.55 For the purpose of SLC 1.34 [limit on directorships], SLC 1.38 [establishment of nomination committee] and SLC 1.46 [establishment of risk committee], a Licence Holder is considered significant in terms of size, internal organisation and the nature, the scope and the complexity of its Investment Services and activities, if it meets, at any time, one or more of the following conditions:
- a. its total balance sheet assets exceed **EUR 43 million**;
 - b. the annual turnover relating to its investment services activities exceeds **EUR 50 million**;
 - c. the clients' money that it holds or controls exceeds **EUR 100 million**; and
 - d. the assets belonging to its clients that it holds or controls in the course of, or connected with its investment services activities exceeds **EUR 3 billion**.
- 1.56 The Licence Holder shall regularly assess, whether it, at any time, becomes a significant Licence Holder in terms of SLC 1.55 and shall notify the MFSA regarding any change of status as soon as practicable thereafter.
- 1.57 The MFSA may, on a case by case basis, exempt a significant Licence Holder from the requirements of SLC 1.34, SLC 1.38 and SLC 1.46 if it believes the rules that apply to a significant Licence Holder may be disproportionate to it, taking into account the size, internal organisation and the nature, the scope and the complexity of its Investment Services and activities.
- 1.58 The MFSA may on a case by case basis, treat a Licence Holder as significant notwithstanding that it does not exceed the thresholds referred to in SLC 1.55 above, if in the opinion of the MFSA the application of some or all of the rules applicable to significant firms including provisions of the CRR would be appropriate to that Licence Holder.

On the other hand, if a Licence Holder exceeds one or more of the thresholds referred to in SLC 1.55 the MFSA may, at its discretion, on a case by case basis, waive a requirement or requirements, if it is of the opinion that the granting of a waiver is justified and appropriate.

The MFSA in exercising these discretions may also consider non-quantitative criteria including but not limited to, the complexity of its Investment Services and activities, market share, level of cross border activity and staff headcount of the Licence Holder

and shall be guided by principles of investor protection and protection of market integrity.

Appendix 1 B

Section 4.4 – Exemption from Part Six of the CRR on a solo (as opposed to consolidated) basis (Liquidity)

Category 2 Licence Holders are not subject to the rules relating to the liquidity risk component set out in Part Six of the CRR.

For the purpose of article 6 (4) of the CRR, a Category 3 Licence Holder, which is not significant in terms of the nature, scale and complexity of its investment services activities, is exempt from compliance with the obligations in Part Six of the CRR (Liquidity) on a solo basis.

The Authority shall apply SLC 1.55 to 1.58 inclusive of Part B I for the purposes of determining whether a Category 3 Licence Holder is to be considered significant.

Appendix 3

Section 5.22 – Exemption from Part Six of the CRR on consolidated basis (Liquidity)

In terms of the CRR, a Category 3 Licence Holder which forms part of a Consolidated Group is required to comply with Part Six (Liquidity) on a consolidated basis.

For the purpose of article 11 (3) of the CRR, a Consolidated Group, which comprises only of investment firms, that are not significant in terms of the nature, scale and complexity of their investment services activities, are exempt from compliance with the obligations in Part Six of the CRR (Liquidity) on a consolidated basis.

The Authority shall apply SLC 1.55 to 1.58 inclusive of Part B I for the purposes of determining whether a Category 3 Licence Holder is to be considered significant.

Appendix 4

Section 1.4 – Remuneration policy and practices disclosure requirements

For Licence Holders that are significant in terms of *SLC 1.55 or SLC 1.58* of Part B I, the quantitative information referred to in this point shall also be made available to the public in respect of members of the management body.

The Authority shall apply SLC 1.55 to 1.58 inclusive of Part B I for the purposes of determining whether a Licence Holder is to be considered significant.

Licence Holders shall comply with the requirements set out in Section 1.4 of this Appendix, in a manner that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities and without prejudice to the Data Protection Act (Cap. 440).

Appendix 10

Part A Section [V] [F]

[F] Additional technical criteria on the treatment of remuneration risk

[d] The Licence Holder which is significant as defined in the Rules, shall establish a remuneration committee. The remuneration committee shall be constituted in such a way as to enable it to exercise competent and independent judgement on remuneration policies and practices and the incentives created for managing risk, capital and liquidity.

The remuneration committee shall be responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the Licence Holder concerned and which are to be taken by the management body. The Chairperson and the members of the remuneration committee shall be members of the management body who do not perform any executive function in the Licence Holder concerned. If employee representation on the management body is provided for by Maltese law, the remuneration committee shall include one or more employee representatives. In its deliberations, the remuneration committee must take into account the long-term interests of shareholders, investors and other stakeholders in the Licence Holder and the public interest.

The Authority shall apply SLC 1.55 to 1.58 inclusive of Part B I for the purposes of determining whether a Licence Holder is to be considered significant.

The principles set out in Section F (a) – (d) above shall be applied by the Licence Holder at group, parent company and subsidiary levels, including those established in offshore financial centres.