

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

CONSULTATION DOCUMENT

CONSULTATION ON AMENDMENTS TO THE INVESTOR COMPENSATION SCHEME REGULATIONS ISSUED UNDER THE INVESTMENT SERVICES ACT

[MFSA REF: 14-2016]

4th November 2016

Closing Date: 5th December 2016

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.

Note for Consultation

1. Purpose:

The purpose of this document is to consult interested parties on proposed amendments to the Investor Compensation Scheme Regulations S.L 370.09 (“Regulations”).

One of the purposes of these amendments is to bring the Regulations more in line with the Investor Compensation Scheme Directive 97/9/EC (“ICD”): It is being proposed that appropriate amendments be made to ensure that all investment firms which fall within the scope of the ICD should also participate in the Investor Compensation Scheme (“the Scheme”). Such an amendment would require the participation by Category 1 licensed investment firms as well as the removal of the first proviso to regulation 11, thereby mandating participation by Category 2 and Category 3 investment firms even where such firms provide services solely and exclusively to non-retail clients. By contrast participation by Category 4 investment firms is not being recommended because such firms only offer trustee or custody services to Collective Investment Schemes, and such services fall outside the current ICD participation requirement.

It is also recommended that appropriate amendments be made to the Regulations in order to expressly condition the payment of compensation by the Scheme to a firm’s failure, as evidenced by a determination. It is being proposed that funding arrangements should aim towards building a target fund level of approximately €5.8 million. Such a fund size would represent an ex-ante funding coverage ratio of 0.5% which is equivalent to the minimum target fund mandated in the Commission’s proposal for a Directive amending Directive 97/9/EC (“the proposed Directive”).

Furthermore, it is proposed that such a fund be built up over a transitional period of 5 years. It is acknowledged that such a transitional period would extend the time within which the Scheme would need to be sufficiently funded; however this is deemed necessary in order to smoothen the burden of such payments for the industry.

Where the ex-ante funds are not adequate to cover all liabilities of a scheme, additional ex post contributions should be levied. It is recommended, that as suggested in the proposed Directive, additional ex post contributions should not exceed 0.5% of the covered monies and financial instruments.

It is recommended that in application of the requirement under article 26 (3) (e) of the Arbitrator for Financial Services Act 2016, the Scheme shall settle any judgment or award for up to twenty thousand euro (EUR 20,000), in respect of a determination of civil liability which is obtained by an investor against a financial services provider.

It is also being recommended that all compensation payments shall be made in euro. Where the monies or instruments owed to or belonging to investors are in a currency other than the euro, the exchange rate used shall be the applicable euro foreign exchange reference rate quoted by the European Central Bank on the date of the determination.

The new wording in the proposed regulation 22 does not make any change in substance but is intended to make it clear that, upon payment of compensation, the Scheme is immediately and

automatically subrogated by operation of the law into all the rights of the investor, up to the amount of the compensation paid, against the licence holder and any other third party. The wording is thus aligned to the general principle in the Civil Code, which is applicable today, and confers a general right of subrogation in favour of the Scheme to all rights of the Investor. Like the position today, nothing prevents the Scheme from also making contractual arrangements with the investor to whom the Scheme pays compensation.

The proposed amendments replace the current Fixed and Variable Contributions as follows:

The current Fixed Contribution amounts (rounded to the nearest thousand) should be the minimum amounts of contributions that should henceforth be payable by licensed firms as follows:

- (a) €3,000 in the case of Category 1 and Category 2 Investment Services Licence Holders;
and
- (b) €18,000 in the case of Category 3 Investment Services Licence Holders.

Subject to such minimum amounts, the contribution that should be payable by any licensed firm should be proportional to the volume of assets held by such firm and eligible for compensation. This assessment will rely on the number of clients rather than the value of clients' assets, on the basis that the volume of assets eligible for compensation by the Scheme is capped at €20,000 per eligible investor. In this way, and subject to the minimum contribution amounts, the contributions will be directly linked to the risks posed by the firm to the Scheme.

The calculation of a firms' contribution on the basis of clients' assets, will require the Scheme to have in place monitoring tools to check the accuracy and completeness of the data reported by the licence holders, and the related contributions paid.

Finally, it is being proposed that the financial provisions of the Scheme should be harmonised with those of Depositor Compensation Scheme.

2. Consultation and how to respond

Any feedback on the proposed amendments should reach the MFSA by not later than Monday 5th December 2016. Please send your responses by e-mail to communications@mfsa.com.mt

3. The proposed amendments

1. Regulation 2: Add the following new definitions:

"available financial means" means cash, deposits and low-risk assets which can be used for the purposes laid down in regulation 19 and payment commitments up to the limit set out in regulation 12A (2);

"client" means:

- (a) any person to whom a licence holder provides licensed business services, or
- (b) any person who has entrusted money or instruments to a licence holder in connection with licensed business;

“covered liability” in relation to a participant means the maximum amount of compensation specified in regulation 17 (1) multiplied by the total amount of investors of the said participant;

"financial year" means the financial year of the Scheme which shall be an accounting period of twelve months ending on the thirty-first day of December of each year;

"low-risk assets" means items falling into the first or second category referred to in Table 1 of Article 336 of Regulation (EU) No 575/2013 or any assets which are considered to be similarly safe and liquid by the competent authority;

"management expenses" means expenses incurred, or expected to be incurred, by the Scheme in connection with its objective and functions under these regulations other than those incurred in paying compensation pursuant to regulation 19;

“participant” means every licence holder participating or required to participate in the Scheme;

"payment commitments" means payment commitments of a participant towards the Scheme in accordance with regulation 12A (2), which are fully collateralised provided that the collateral:

- (a) consists of low risk assets; and
- (b) is unencumbered by any third-party rights and is at the disposal of the Scheme;

2. Regulation 11 (1) shall be substituted with the following:

11 (1) Every licence holder, in possession of a Category 1, Category 2, or Category 3 licence in terms of the Investment Services Act or any subsidiary legislation thereunder, shall participate in and contribute to the Scheme:

Provided that a branch of a licence holder operating in Malta which is licensed in a non-EEA state shall participate in and contribute to the Scheme, unless the Scheme has in force an agreement with the authority responsible for the management and administration of the scheme in that other state stipulating, inter alia, that the level or scope of cover provided for investors in that state is equal to or exceeds the level or scope of cover in Malta:

Provided further that a branch of a licence holder operating in Malta which is licensed in an EEA state may at its own option, participate in and contribute to the Scheme, only where the level or scope of the Scheme in Malta exceeds the level or scope of cover provided in the EEA state in which it is licensed.

3. Regulation 12 shall be substituted with the following new regulations:

12A (1) The available financial means of the Scheme shall for each of the financial years specified in the first column amount to the percentage amount of the covered liability of all participants specified in the corresponding row of the second column:

Year	Percentage amount
2017	0.1%
2018	0.2%
2019	0.3%
2020	0.4%
2021 and for each year thereafter	0.5%

Provided that:

(a) the competent authority may by virtue of investor compensation rules pursuant to regulation 12K establish the available financial means of the scheme in such other higher amount as it may determine;

(b) where the available financial means fall short of such target level, the payment of contributions shall resume at least until the target level is reached again;

(c) if the available financial means have been reduced to less than two-thirds of such target level, the regular contribution shall be set at a level allowing such target level to be reached within six years;

(d) the regular contribution shall take due account of the phase of the business cycle, and the impact procyclical contributions may have when setting annual contributions in the context of these regulations.

(2) The available financial means to be taken into account in order to reach the target level may include payment commitments.

Provided that:

(a) the total share of payment commitments shall not exceed 30% of the total amount of available financial means raised in accordance with this regulation; and

(b) the competent authority may issue investor compensation rules pursuant to regulation 12K in order to prescribe such other amount of payment commitment as it may determine.

(3) The Scheme shall ensure that it has in place adequate alternative funding arrangements to enable it to obtain short-term funding to meet claims against the Scheme.

(4) The available financial means shall be used in order to repay investors pursuant to these regulations

12B The Scheme may at any time require participants to pay the following contributions:

- (a) Compensation Contribution;
- (b) Management Expenses Contribution.

12C (1) Subject to regulation 12A (1), the Scheme shall, with effect from 1st January 2017, require participants to pay a Compensation Contribution at least once in every financial year. The Compensation Contribution shall be allocated to the available financial means. A portion of the Compensation Contribution due by each participant for each financial year may be provided to the Scheme by means of a payment commitment: Provided that such portion shall not exceed 30% of the Compensation Contribution due or such other amount of payment commitment as may be determined pursuant to regulation 12A (2) (b).

(2) If the available financial means of the Scheme are insufficient to compensate investors after a determination in accordance with regulation 13, the Scheme shall require participants to pay an extraordinary Compensation Contribution not exceeding 0.5% of their covered liabilities per financial year. The Scheme may in exceptional circumstances and with the consent of the competent authority require higher contributions.

(3) The Compensation Contribution (including any extraordinary Compensation Contribution) shall be based on the amount of covered liabilities of each participant: Provided that a participant shall be required to pay a Minimum Compensation Contribution irrespective of the amount of its covered liabilities in the manner specified in subparagraph (5). For the avoidance of doubt and saving the provisions of these regulations, the annual Compensation Contribution shall be determined by the Scheme for each participant having regard to:

- (a) the applicable percentage of the covered liabilities of all participants as specified under regulation 12A (1);
- (b) the covered liabilities of each participant at the end of the year immediately preceding the relevant financial year;
- (c) the minimum Compensation Contribution specified in subparagraph (5).

(4) Notwithstanding the provisions of sub-regulation (3), if a participant does not comply with the obligations incumbent on it under regulation 26, or if it does not provide to the Scheme the statement referred to under the sub-regulation (6) of the said regulation by the date on which it is due, the participant's contribution will be calculated using (where relevant or available) the participant's total covered liabilities applicable to the previous period, multiplied by a factor of 1.20 or on any other reasonable basis in the discretion of the Scheme.

(5) Every participant shall every financial year pay to the Scheme a minimum Compensation Contribution as follows:

(a) €3,000 in the case of Category 1 and Category 2 Investment Services Licence Holders; and

(b) €18,000 in the case of Category 3 Investment Services Licence Holders.

(6) Subject to the provisions of sub-regulations (3) and (4), the competent authority may in virtue of investor compensation rules establish a method (hereinafter referred to as the "Compensation Contribution method") for determining the amount of Compensation Contribution and the amount of payment commitment due by each participant for each financial year: Provided that the competent authority may review or amend any such Compensation Contribution method.

(7) Any payment commitment shall become payable to the Scheme on the Scheme's demand. The payment commitment of a participant shall also become payable to the Scheme whenever that participant ceases to be licensed in Malta for any reason whatsoever.

(8) Details on the type of assets which may be accepted as collateral for Payment Commitments and on the modalities used to implement such Payment Commitments may be specified by investor compensation rules.

(9) The value of assets comprising collateral for the Payment Commitments shall be the market value of such assets, determined in accordance with such discounting rules ("Valuation Haircuts") as shall be established by investor compensation rules.

(10) The assets comprising collateral for the Payment Commitments shall be denominated in euro.

(11) A participant may not switch from one asset comprising collateral for the Payment Commitments to another asset, without the prior written consent of the Scheme.

(12) A participant may, with the prior approval of the Scheme, pay the equivalent amount of the Payment Commitment directly with the Scheme, in which case such payment shall be on account of the participant's liability under sub-regulation 12C (1) and the provisions of this regulation shall, where applicable, also be applicable to such payment. No interest shall be payable by the Scheme to the participant in respect of such payment. The Scheme may, in its absolute discretion,

request the participant to substitute such payment with the Payment Commitments due under these regulations.

12D (1) The Scheme may, with effect from 1st January 2017, require participants to pay a Management Expenses Contribution at least once in every financial year if it has reasonable grounds to believe that the funds available to it to meet management expenses in that financial year are, or will be, insufficient.

(2) The Scheme shall apply any amount collected from a Management Expenses Contribution to the payment of management expenses, and shall not treat such funds as available financial means of the Scheme.

(3) The competent authority may by investor compensation rules pursuant to regulation 12K establish a method (hereinafter referred to as the "Management Expenses Contribution method") for determining the amount of Managements Expenses Contribution due by each participant in any financial year: Provided that the competent authority may review or amend any Management Expenses Contribution method.

(4) Notwithstanding any other provision in these Regulations, a participant which becomes a participant of the Scheme part way through a financial year, shall for the financial year in which it has become a participant pay an Initial Management Expenses Contribution amounting to €1,200.

12E (1) The Scheme shall assess at least once in every financial year the Compensation Contribution and the Management Expenses Contribution for each participant in respect of the relevant financial year in accordance with these Regulations.

(2) The Scheme shall give notice to each participant about the amount of its Compensation Contribution and its Management Expenses Contribution in respect of any relevant financial year. The obligation of the participant towards the Scheme in respect of such Contributions for any relevant financial year shall be deemed to arise on the date of such notice.

(3) A participant which is aggrieved by any such assessment may request the Scheme to reconsider such assessment.

(4) A request for reconsideration shall be made within thirty days from notification of the assessment and may not be made concurrently with an appeal.

(5) The request for reconsideration shall include a written document stating precisely the reasons for such a request, and the manner in which it considers that the assessment should be amended.

(6) On receipt of a request for reconsideration, the Scheme may require the participant making the request to furnish such information as the Scheme may deem necessary.

(7) In the event that the Scheme accedes to the request for reconsideration or otherwise the participant agrees with the Scheme as to the amount of the contribution, the assessment shall be amended accordingly, and notice of the amount of contribution payable shall be notified upon such participant.

(8) If no agreement is reached, the Scheme shall assess the amount of the contribution payable in writing, and give notice thereof to the participant: Provided always that in the event of any participant who has applied for reconsideration, failing to agree with the Scheme on such assessment, its right of appeal against the assessment, shall remain unimpaired.

(9) A participant may not appeal against an assessment of the contribution unless it has first exhausted its right to a reconsideration of such assessment.

(10) An appeal shall be filed against the Scheme and made to the Financial Services Tribunal under article 19 of the Act, within thirty days of service of the notice to the participant of the notice of the assessment referred to in sub regulation (8). The request for an appeal shall include a written document stating precisely the reasons for such a request, and the manner in which it considers that the assessment should be amended. The Financial Services Tribunal shall have all the powers conferred upon it by article 21 of the Malta Financial Services Authority Act. Saving the provisions of these Regulations, the provisions of article 21 of the Malta Financial Services Authority Act shall apply *mutatis mutandi* to appeals that may be brought before the Financial Services Tribunal under these Regulations, so however that any reference in article 21 to the Competent Authority shall include a reference to the Scheme.

(11) An appeal on a question of law only from a decision of the Financial Services Tribunal shall lie to the Court of Appeal in its superior jurisdiction. An appeal shall be made by not later than twenty days from the date of the decision of the Financial Services Tribunal. In the determination of such an appeal, the Court of Appeal shall be constituted in terms of article 41(6) of the Code of Organisation and Civil Procedure. An appeal from a partial decision of the Financial Services Tribunal may only be filed together with an appeal from the final decision of the Financial Services Tribunal.

(12) Where an assessment as referred to in sub-regulation (1) has not been appealed, or where such assessment has been agreed in accordance with sub-regulation (7), or where such assessment has been appealed, within fifteen days of the date when the decision of the Financial Services Tribunal or the Court of Appeal has become a *res judicata*, the assessment as contained in the notice of the Scheme or as reduced or increased by the decision of the Tribunal or the Court of Appeal shall be due to the Scheme.

(13) Upon the service of a copy of the notice or of the decision, as the case may be, by means of a judicial act on the participant indicated in the notice or decision, the said notice or decision shall constitute an executive title for all effects and purposes of Title VII of Part I of Book Second of the Code of Organization and Civil Procedure.

12F (1) The calculation of contributions shall take into account previous contributions, where contributions raised prove either more or less than the amount actually due in accordance with these regulations.

(2) The Scheme may adjust the calculation of a participant's share of any contribution to take proper account of any or all of the following:

(a) any excess or shortfall, not already taken into account, between previous contributions of the same type assessed in relation to previous financial years and the relevant contributions actually due in that financial year;

(b) amounts that the Scheme has not been able to recover from participants for any reason whatsoever;

(c) payments deferred under regulation 12H;

(d) anything else that the Scheme believes on reasonable grounds should be taken into account.

(3) The Scheme may reduce, remit, or refund any overpaid contributions paid by a participant in respect of any particular financial year, or adjust the calculation of a participant's share of any contribution, wherever there is a mistake of law or of fact, unless the reduction, remit, refund or adjustment is in respect of a contribution which is prescribed in accordance with regulation 12G (9).

(4) A participant who ceases to be a participant of the Scheme for whichever reason shall not be entitled for any refund of payments to the Scheme in respect of its contributions.

12G (1) A participant shall pay to the Scheme its:

(a) Compensation Contribution; and

(b) Management Expenses Contribution.

(2) A participant's contribution shall be due on and payable within, thirty days of the date of the notice of an assessment pursuant to regulation 12E (2).

(3) Where a participant requests a reconsideration or files an appeal against an assessment of the contribution, such request or appeal shall not delay the payment deadlines set out in sub-regulation (2). Such participant shall be entitled to a refund from the Scheme of any amount of contribution paid in excess of the amount which is agreed in accordance with regulation 12E (7), or where such assessment has been appealed, of the amount which is finally determined as due by a decision of the Financial Services Tribunal or the Court of Appeal which has become a *res judicata*.

(4) If a participant ceases to be a participant part way through a financial year of the scheme, it will remain liable for any unpaid contributions.

(5) If a participant does not pay the total amount of its contribution, before the end of the date on which it is due, it shall pay an additional amount to the Scheme as follows:

(a) if the contributions was not paid in full before the end of the due date, an administrative fee of five hundred euro (€500); and

(b) interest on any unpaid part of the contribution at the rate of 8% per annum, accruing on a daily basis from the date on which the amount concerned became due.

(6) Where the Scheme decides to sue for the recovery of a contribution, administrative fee or interest due to it by a participant under these regulations, the Chairperson or an officer of the Scheme duly authorised by the Scheme to act on its behalf may make a declaration on oath before the Court Registrar or before any other officer authorised to administer the oath in judicial matters, wherein he states the nature of the debt and the name of the participant and confirm that it is due.

(7) Saving the provisions of regulation 12E (12), the declaration referred to in sub-regulation (6) shall be served upon the participant by means of a judicial act and it shall have the same effect as a final judgement of the competent court unless the participant shall, within a period of twenty days from service upon him of the said declaration, oppose the claim by filing an application stating precisely the reasons for such opposition and demanding that the court declare the claim unfounded.

(8) The application filed in terms of sub-regulation (7) shall be served upon the Scheme, which shall be entitled to file a reply within a period of twenty days. The court shall appoint the application for hearing on a date after the lapse of that period.

(9) Any action by the Scheme for the payment of any contribution due by a participant shall be barred by the lapse of a period of prescription of two years from the date on which the contribution was due.

12H (1) The competent authority may defer, in whole or in part, a participant's obligation to pay a contribution if the competent authority considers that such contributions would jeopardise the liquidity or solvency of the participant. Such deferral shall not be granted for a longer period than six months but may be renewed upon request of the participant.

(2) Any contributions deferred pursuant to sub-regulation (1) shall be paid when the payment no longer jeopardises the liquidity and solvency of the participant.

(3) Any such deferral shall suspend the period of prescription set out in regulation 12G (9).

12I (1) The Scheme may hold any amounts collected from Compensation Contributions or Management Expenses Contributions and any other funds managed and administered by it on deposit or may invest such contributions, having regard to the need for prudence.

(2) Interest or any other form of income or gain earned by the Scheme in respect of its assets held pursuant to sub-regulations (1) shall be allocated to the Scheme's reserves, including the "Accumulated Fund" and the "Revaluation Reserve".

(3) The Management Committee may at any time, and at its sole discretion, allocate any of the Scheme's reserves held pursuant to sub-regulation (2) to either of the class of funds representing the Scheme's available financial means or the Management Expenses contributions.

12J A notice or other document to be given, provided or served under these regulations shall be deemed to have been duly given or served on a person if the requirements of article 187 (1) and (4) of the Code of Organisation and Civil Procedure are complied with:

Provided that a notice or other document may in all cases be served by means of a judicial act, in which case the relevant provisions of the Code of Organisation and Civil Procedure shall apply.

12K (1) The competent authority may issue investor compensation rules to licence holders for the purposes of these Regulations.

(2) Such investor compensation rules may contain such incidental, supplementary and consequential provisions as appear to the competent authority to be expedient for the purpose of these regulations.

4. Regulation 17 (2) shall be substituted with the following:

(2) All compensation payments shall be made in euro. Where the monies or instruments owed to or belonging to investors are in a currency other than the euro, the exchange rate used shall be the applicable euro foreign exchange reference rate quoted by the European Central Bank on the date of the determination given in terms of regulation 13 (1).

5. Regulation 19 shall be substituted with the following:

19 (1) After a determination is made, in terms of Regulation 13, the Scheme shall provide for the payment of compensation in respect of claims arising out of a licence holder's inability to:

(a) repay money owed to or belonging to investors and held on their behalf in connection with licensed business; or

(b) return to investors any instruments belonging to them and held, administered or managed on their behalf in connection with licensed business or, where this is not possible, their monetary equivalent or value.

(2) Without prejudice to any payment of compensation which the Scheme is required to make in accordance with these regulations, and in application of the requirement under article 26 (3) (e) of the Arbitrator for Financial Services Act 2016, the Scheme shall also settle any judgment or award for up to twenty thousand euro (EUR 20,000), in respect of any civil liability which is obtained by an

investor against a participant in regard to licensed business in respect of which there is a determination, and such payment shall be made within ten (10) business days from the day when the judgement or award becomes res judicata. Such amount shall be deducted from the maximum amount of compensation which may be payable under regulation 17 (1).

(3) The amount of an investor's claim shall be calculated by the Management Committee after taking into account any or all of the following factors:

- (a) legal and contractual conditions;
- (b) counterclaims;
- (c) market value; and
- (d) surrender value.

6. Regulation 22 shall be substituted with the following:

22 (1) Without prejudice to any other right which the Scheme may have at law, the Scheme shall, upon paying compensation under these regulations, immediately and automatically be subrogated to all the rights of the investor, up to the amount of the compensation paid, as against the licence holder and, or any third party.

(2) Upon paying compensation under these regulations, the Scheme shall decide in its absolute discretion which recoveries are likely to be both reasonably possible and cost effective to pursue.

(3) Prior to payment by the Scheme, investors shall confirm in writing to the Scheme that:

- (a) they have not received any payment from any other scheme or from the licence holder concerned in respect of the same loss;
- (b) they will provide any assistance the Scheme may require to enable the Scheme to exercise its rights and remedies against the licence holder; and
- (c) their rights in respect of any money or instruments comprising the claim shall be subrogated in favour of the Scheme.

7. Regulation 26 shall be substituted with the following:

26 (1) Participants shall ensure that they have electronic information systems in place to the satisfaction of the Scheme in order:

(a) to provide to the Scheme, at any time and upon its request, all information relevant for the achievement of the Scheme's objective and functions or for the proper administration of the Scheme, including the repayment of investors and testing purposes;

(b) to enable the Scheme to process claims for compensation by investors and this at all times, whether or not a determination has been made under regulation 13; and

(c) to provide the Scheme with the information required in regulation 12C (4).

(2) Participants shall ensure that their electronic information systems hold records of all their existing and past clients and that it can correctly identify between clients who fall within the definition of "investor" and those who do not, and that for every such client, complete, dated and up to date records are maintained to the satisfaction of the Scheme, including records of all transactions involving payments from or to such clients and instruments which are or have been held or bought by the participant for or to the benefit of such clients.

(3) Participants shall, on an annual basis, provide a declaration to the satisfaction of the Scheme that such electronic information systems are in full compliance with the requirements of this regulation. Such declaration shall be confirmed and signed by the auditors of the participant.

(4) The Scheme may at any time and in its discretion conduct independent tests of a participant's data capturing procedures and information systems. Such tests shall be carried out at the expense of the participant.

(5) Participants shall upon and in the manner requested by the Scheme provide to the Scheme an aggregated statement of the records held in accordance with sub regulation (2).

(6) Participants shall in addition provide to the Scheme a written and an electronic statement showing its total number of investors as at 31st December of each year.

(7) The statement referred to in subparagraph (6) shall be provided by not later than the end of February of each year.

(8) Without prejudice to any other provision of these regulations, any participant or any director or official thereof, who:

(a) fails to comply with the Scheme's request for information within the period of time established by the Scheme pursuant to these regulations; or

(b) knowingly or recklessly furnishes information, or makes a statement which is inaccurate, false or misleading in any material respect; or

(c) fails to comply with the requirements of this regulation

shall for every failure, be liable to an administrative penalty of not less than one thousand and five hundred euro (€1,500) but not exceeding one hundred and twenty-five thousand euro (€125,000), and in the case of a continuing infringement to a further administrative penalty not exceeding two hundred

and fifty euro (€250) for each day during which the infringement continues, as may be imposed by the competent authority by means of a notice in writing and without recourse to a court hearing.

(9) Where an administrative penalty has been imposed by the competent authority in terms of this regulation, an appeal shall lie to the Financial Services Tribunal in accordance with articles 19 of the Act.

(10) The Scheme shall notify the Authority where a participant fails to comply with the obligations imposed on it under these regulations and the Authority shall take all measures appropriate to ensure that the said participant meets such obligations.

8. The Second and Third Schedule of the Regulations shall be deleted.

**Communications Unit
Malta Financial Services Authority
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