L.N. 368 of 2003

INVESTMENT SERVICES ACT (CAP. 370)

Investor Compensation Scheme Regulations, 2003

IN exercise of the powers conferred by article 12 of the Investment Services Act, the Minister of Finance and Economic Affairs, acting on the advice of the Malta Financial Services Authority, as the competent authority appointed for the purposes of that Act, has made the following regulations:- Cap.370.

1. (1) The title of these regulations is the Investor Compensation Scheme Regulations, 2003. Citation and date of commencement.

(2) These regulations shall come into force on the 21st November, 2003.

2. In these regulations, unless the context otherwise requires – Interpretation.

"Act" means the Investment Services Act; Cap.370.

"branch" means a place of business which forms a legally dependent part of a licence holder and from which some or all of the activities for which the licence holder has been authorised is conducted; all the places of business set up in any one country by a licence holder whose head office is in Malta or in another country shall be regarded as a single branch;

"competent authority" means the competent authority under the Act;

"Financial Services Tribunal" means the tribunal established in terms of the Malta Financial Services Authority Act; Cap.330.

"instruments" shall have the meaning assigned to the word in article 2 of the Act;

"investor" means any individual who otherwise than in the course or for the purpose of a business, trade or profession entrusts money or instruments to a licence holder in connection with licensed business;

"licensed business" means the carrying out of any activity in regard to which there is a licence under the Act;

"licence holder" means any person who holds a licence to carry out investment services business in terms of the Act;

"Management Committee" means the Compensation Schemes Management Committee established under regulations 3 and 5 of these regulations and referred to in the Depositor Compensation Scheme Regulations, 2003;

"Scheme" means the Investor Compensation Scheme established under regulation 3 of these regulations;

"total revenue" means all gross income received or receivable from the licence holderís business activities which are licensable under the Act, whether actually licensed or not;

and the words and expressions which are also used in the Act shall have the same meaning as in the Act.

Establishment of the Investor Compensation Scheme.

3. (1) There shall be established an Investor Compensation Scheme.

(2) The Scheme shall be a body corporate having a distinct legal personality and shall be capable, subject to the provisions of the Act and of these regulations, of entering into contracts of borrowing or otherwise incurring indebtedness for the purposes of its functions, of acquiring, holding and disposing of any kind of property for the purposes of its functions, of suing or being sued and of doing all such things and entering into all such transactions as are incidental or conducive to the exercise or performance of its functions.

(3) The Scheme shall be managed and administered by and be under the general control of the Management Committee appointed in terms of regulation 5 of these regulations.

(4) The legal and judicial representation of the Scheme shall vest in the chairperson of the Management Committee:

Provided that, and without prejudice to the foregoing, the Management Committee may vest any one or more of its members or of the officers or agents of the Scheme with legal or judicial representation.

Functions of the Scheme.

4. (1) Without prejudice to any other power or function conferred on it by these regulations or by any other law, it shall be the function of the Scheme –

(a) to maintain a fund or funds out of which payments shall be made to investors and to meet such other payments or expenses as may be paid out of the fund or funds in accordance with these regulations;

(b) to establish and maintain, after consultations with the competent authority, arrangements for the making of payments to investors in accordance with these regulations;

(c) to process claims for compensation by investors as expeditiously as possible and to ensure that compensation is paid out without undue delay; and

(d) to advise the competent authority on matters relating to compensation of investors.

(2) The objective of the Scheme is to provide a means of protection for private investors within the framework of these regulations. All the members of the Management Committee shall work in the best interest of the Scheme and shall pursue and promote its objective.

Composition of the Management Committee.

5. (1) The Management Committee shall be appointed by the competent authority and shall consist of a chairperson and six other members as follows:

(a) an officer, not below managerial grade, performing duties with the competent authority, possessing the necessary expertise and experience in financial services;

(b) a person nominated by an association or associations or other bodies representing persons holding a licence under the Act which participate in and contribute to the Scheme in terms of these regulations, and which are recognised for such purpose by the competent authority;

(c) a person nominated by an association or associations or other bodies representing credit institutions which participate in and contribute to the Depositor Compensation Scheme established under the Depositor Compensation Scheme Regulations, 2003, and which are recognised for such purpose by the competent authority;

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(d) a person nominated jointly by the associations or other bodies indicated in paragraphs (b) and (c) of this regulation;

(e) an officer, not below managerial grade, performing duties with the Central Bank; and

(f) a person, who because of his experience, qualifications or activities is considered as being able to state and represent the point of view of consumers:

Provided that whenever, for any reason whatsoever, the associations or other bodies representing licence holders and credit institutions referred to in (b), (c) and (d) of sub-regulation (1) of this regulation fail to nominate, within the time given to it by the competent authority, the person it is required to nominate, the competent authority shall appoint the persons, or the remaining person, at its discretion.

(2) The members of the Management Committee shall be appointed from among persons who, in the view of the competent authority, have proven experience and are qualified in financial services, management, or possess any other relevant professional or commercial knowledge and expertise.

(3) The members of the Management Committee nominated in terms of paragraphs (b), (c) and (d) of sub-regulation (1) shall not be eligible for appointment if they have a financial or other interest as is likely to affect prejudicially the discharge by them of their functions under these regulations. Such members of the Management Committee shall serve in their personal capacity and shall not represent or receive directives or instructions from the person or entity nominating them.

(4) Every member of the Management Committee shall hold office for such period and upon such terms and conditions as may be determined by the competent authority and indicated in the letter of appointment. Such term of office shall be of not less than three years and not more than five years. Every member of the Management Committee, including the chairperson, shall be eligible for re-appointment.

(5) A member of the Management Committee may be relieved of office by the competent authority on the grounds of inability to perform the functions of his office, whether due to infirmity of mind or of body, or of misbehaviour; and for the purposes of this paragraph repeated and unjustified non-attendance of meetings of the Management Committee may be deemed to amount to misbehaviour.

(6) A member of the Management Committee may resign from office by means of a letter addressed to the competent authority.

(7) The competent authority may fill any vacancy occurring in the Management Committee for any reason whatsoever, having regard to the provisions of sub-regulation (1) of this regulation.

(8) Notice of the names of the members of the Management Committee (and any resignation, dismissal and new appointment) shall be published in the Gazette.

(9) The competent authority shall establish any remuneration to be paid to the members of the Management Committee.

(10) The competent authority shall appoint one of its officers to serve as secretary to the Management Committee. Such person shall be responsible to make the necessary preparations for the meetings of the Committee and to keep the minutes thereof.

(11) For the purpose of sub-regulations (2), (4), (5), (6), (8) and (9) of this regulation, "member" shall include the chairperson.

Powers and duties of the Management Committee.

6. (1) The Management Committee shall have the power to enter into such reasonable administrative and other expenses as may be necessary to enable it to fulfil its functions under these regulations.

(2) The Management Committee may place contributions made by licence holders in terms of regulation 11 of these regulations and any other funds managed and administered by it on deposit or may invest such contributions, having regard to the need for prudence.

(3) The Management Committee may take out insurance policies, borrow or otherwise incur indebtedness on behalf of the Scheme for the purposes of the Schemeís functions, in any way and under any terms it may consider appropriate, provided such borrowings do not exceed 30 per cent of the net asset value of the Scheme.

(4) The Management Committee shall cause proper books of account to be kept so that the financial position of the Scheme can be ascertained with reasonable accuracy at any time.

(5) In exercising its powers and duties, the Management Committee shall be bound to safeguard and take into account the general interests of investors entitled to claim under these regulations.

Investment management and administrative support agreements.

7. Without prejudice to sub-regulation (1) of regulation 6, the Management Committee shall enter into such investment management and administrative support agreements as may be approved by the competent authority.

Publication of Financial Statements.

8. (1) The Management Committee shall prepare annual forecast statements of the expected costs and revenues of the Scheme, and shall make available such forecast statements to all participants upon request.

(2) The Management Committee shall submit to the competent authority an annual report on the discharge of its functions and on the operation of the Scheme within three months from the financial year end of the Scheme. Such annual report shall include, inter alia -

(a) a statement showing the payments in and payments out of the Scheme during its immediate previous financial year; and

(b) annual audited financial statements prepared in accordance with International Accounting Standards.

(3) The annual report shall be made available on the website of the competent authority.

(4) The books of accounts shall be kept at such place as the Management Committee thinks fit.

Meetings of the Committee.

9. (1) The meetings of the Management Committee shall be held as often as may be required but not less than once every three calendar months.

(2) Meetings of the Management Committee shall be convened by the chairperson either on his own initiative or at the written request of any two members of the Management Committee.

(3) The Management Committee shall only conduct business if at least four members (which shall include the chairperson or, in his absence, the member nominated by the competent authority) are present.

(4) For the purpose of decisions of the Management Committee, each member shall have one vote. Voting shall be by simple majority of the members present. In the event of an equality of votes, the chairperson shall have a second or casting vote.

(5) Subject to the foregoing provisions of this regulation, the Management Committee shall have power to regulate its own proceedings and may also establish such procedures or make such rules as it may deem appropriate for the better fulfilment of its purposes.

(6) The Management Committee may invite any person who in its opinion possesses specialised knowledge or expertise on a particular subject, to attend any meeting and take part in the discussions.

Source and application of funds.

10. (1) In terms of regulation 4 of these regulations, the Scheme shall establish and maintain a fund or a number of funds out of which payments to investors shall be made in accordance with these regulations.

(2) The sources of funding shall include:

(a) contributions levied from participants of the Scheme by the Management Committee;

(b) money paid as administrative fees by all participants, as may be prescribed;

(c) money received as income from the investment of the assets of the fund;

(d) money borrowed by the Management Committee for the purposes of the Scheme;

(e) money received by the Management Committee on any insurance policy it takes out; and

(f) any other money required to be paid in to the fund or funds, received or recovered by the Management Committee for the purposes of the Scheme.

(3) There shall be paid out of the fund or funds:

(a) money determined by the Management Committee as compensation for investors;

(b) money required for the repayment of (or interest on or charges in connection with) any money borrowed or for the payment of premia on any insurance policies taken out, for the purposes of the Scheme;

(c) the costs incurred in administering and managing the Scheme; and

(d) any other money paid out by the Management Committee for the purposes of the Scheme.

(4) The Management Committee shall hold, manage and apply the fund or funds in accordance with these regulations.

Participants.

11. (1) Every licence holder in possession of a Category 2 or Category 3 licence in terms of the Investment Services Act (Licence and Other Fees) Regulations, 1995 shall participate in and contribute to the Scheme, including branches of licence holders operating in other countries:

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Provided that licence holders providing investment services solely and exclusively to persons who do not fall within the definition of "investor" in terms of regulation 2 of these regulations shall not be required to participate in and contribute to the Scheme.

(2) In the case of a participant whose head office is situated in a country outside Malta, as well as branches of a licence holder having their head office in Malta but operating outside Malta, and where there is supplementary cover by a corresponding scheme in that other country, the Management Committee shall enter into a bilateral agreement with the authority responsible for the management and administration of the scheme in that other country stipulating, inter alia, the rules and procedures to be followed for the payment of compensation to claimants.

(3) Participation in the Scheme does not exclude the possibility that particular licence holders may have to participate also in another compensation or similar schemes set up under a different law and governed by another competent authority or other body.

(4) When a licence holder becomes a participant in the Scheme after the coming into force of these regulations, the Management Committee shall determine all the relative obligations and conditions of the new participant in terms of these regulations.

Contributions to the Scheme.

12. (1) Participants shall pay such contributions to the Scheme as prescribed in the Second Schedule to these regulations.

(2) Participants may be requested to pay to the Scheme such reasonable administrative fees as may from time to time be prescribed by the Management Committee.

Determination.

13. (1) Where:

(a) it appears to the competent authority that a participant is unable, for the time being, for reasons which are directly related to its financial circumstances to meet its obligations arising from claims by its investors and to have no early or foreseeable prospect of being able to do so, or has otherwise suspended payment; or

(b) in respect of a participant which has its head office in Malta an order has been made by the Courts in Malta for its winding-up or liquidation under the laws of Malta;

whichever is the earlier, the competent authority shall, as soon as practicable, make a determination to that effect.

(2) The competent authority may, by way of Guidelines, establish those circumstances or criteria which it may consider in arriving at a decision as to whether it will make a determination in terms of sub-regulation (1) of this regulation.

(3) As soon as practicable after a determination is made, the competent authority shall inform the Management Committee in writing of such determination. The Management Committee may take additional measures it deems necessary or appropriate within its powers under these regulations.

(4) The competent authority shall, as soon as possible, inform any other compensation scheme relating to financial services activities, as may be established under any other law and regulated by other competent authority or other body, which it believes may be effected by such determination.

(5) In making a determination in accordance with sub-regulation (1) of this regulation, the competent authority shall have regard to any report of an officer or officers authorised by it on the state of affairs of the licence holder, and any other information in its possession.

Application for Compensation.

14. (1) On being informed by the competent authority that a determination has been made under regulation (1) of regulation 13, the Management Committee shall publish a notice in at least two local newspapers, informing investors of the licence holder concerned of such determination and of the manner in which claims supported by documentary evidence are to be submitted.

(2) The right of an investor for compensation shall not be forfeited if the investor is able to prove that he was unable to assert his right to compensation within any prescribed time-limits as may be provided by the Management Committee.

(3) The Management Committee may, following an application for compensation being made to it by an investor, accept or refuse to provide compensation in accordance with these regulations.

(4) The Management Committee shall proceed to pay compensation for verified claims within three months of the date of the determination given in terms of sub-regulation (1) of regulation 13:

Provided that the Management Committee may, in exceptional circumstances, apply to the competent authority for an extension of this period by a further period of up to three months, and up to two further periods of up to three months each thereafter.

Verification of claims.

15. (1) The Management Committee shall make its own administrative arrangements for verifying claims. These arrangements shall include:

(a) providing an application form for claimants both in English and in Maltese;

(b) providing for the exercise of the Management Committeeís right of subrogation under regulation 22 of these regulations; and

(c) requiring claimants to give:

(i) their identity and address;

(ii) the capacity in which they claim;

(iii) evidence of the investments; and

(iv) any other information as may be required by the Management Committee.

(2) The Management Committee may refuse to make a payment for compensation until the claimant informs the Management Committee as to the capacity in which he is the beneficial owner of the investment and provides satisfactory documentary evidence and information to allow the Management Committee to determine the amount of compensation payable.

(3) The Management Committee may decide to delay payment to a claimant until determination of any criminal charge brought against the claimant, investor, or any person entitled to or interested in respect of an investment under the provisions of the Prevention of Money Laundering Act or a corresponding law of a country outside Malta. Cap. 373.

(4) Where in the opinion of the Management Committee circumstances so warrant, the Management Committee may effect part payments to claimants eligible for compensation under these regulations.

When funds appear to be inadequate.

16. Whenever it appears to the Management Committee that the funds for the time being held by the Scheme are inadequate for the Management Committee to exercise its functions, the Management Committee may require a contribution to be made to the Scheme by licence holders out of, but not exceeding, funds reserved for this purpose by the licence holder in accordance with the Second Schedule to these regulations. Such further contributions shall be provided to the Scheme within 30 calendar days of their being requested.

Limit of compensation.

17. The total amount of compensation that may be paid out to an investor shall be the lesser of ninety per cent (90%) in respect of all claims which have been made by such investor, or up to the Maltese liri equivalent of 20,000 Euros converted on the basis of the official closing middle rate issued by the Central Bank of Malta prevailing on the date of settlement of the claim:

Provided that the total compensation paid by the Scheme in any one year shall not exceed 75 per cent of the net asset value of the Scheme as shown in the latest audited financial statements and which shall also include variable contributions held by licence holders in reserves as required in terms of the Second Schedule to these regulations. In this proviso, "net asset value" shall include any funds belonging or due to the Scheme, including the fixed and variable contributions in terms of the Second Schedule to these regulations:

Provided further that where the funds of the Scheme are insufficient to satisfy the claims in full, payments to claimants shall be made pro rata.

Claimants.

18. (1) Only persons being individuals falling within the definition of "investor" in regulation 2 of these regulations may make a claim against the Scheme in terms of these regulations. An investor may only submit one claim in respect of all his investments, taken in aggregate, with the licence holder concerned.

(2) The following individuals are excluded from claiming under the Scheme:

(a) directors and managers of the relevant licence holder and members of the licence holder with personal liability, persons holding five percent or more of the capital of such licence holder, the auditors of the licence holder and persons of the same description with respect to a company forming part of the same group of companies as the licence holder;

(b) close relatives, that is ascendants, descendants or the spouse of the persons referred to in paragraph (a) of this sub-regulation;

(c) investors who, in the view of the Management Committee, have any responsibility for or have taken advantage of certain facts relating to a licence holder which gave rise to the licence holderís financial difficulties or contributed to the deterioration of its financial situation;

(d) investors in respect of transactions in connection with which a criminal conviction has been obtained for money laundering in terms of the Prevention of Money Laundering Act; and

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(e) nominees or other third parties acting on behalf or in the interest of the persons referred to in paragraphs (a) to (d) of this regulation.

(3) The categories listed in the First Schedule to these regulations are also excluded from claiming under the Scheme.

(4) In the event of doubt as to whether an investor is excluded from submitting a claim to the Scheme the matter shall be conclusively determined by the Management Committee for all purposes of these regulations.

(5) An investor may not claim against more than one scheme in respect of a single claim. Where a claim has been made under two or more compensation schemes, the Management Committee shall conclusively determine under which scheme the claimant is eligible for compensation.

(6) Claims shall be made in such form, and shall be accompanied by such documentation or information, as the Management Committee may determine and make public from time to time.

Claims.

19. (1) The Scheme shall provide for the payment of compensation in respect of claims arising out of a licence holderís 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) The amount of an investorís 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.

Eligibility for compensation.

20. Where the Management Committee is of the opinion that an investor is not eligible for compensation in whole or in part in terms of these regulations, the Management Committee shall give notice in writing to such investor of that opinion and the reasons therefor.

Compensation paid to be deducted from compensation payable.

21. (1) In considering compensation to any investor for any payment under these regulations, the Management Committee shall take into account any payments made under a policy of professional indemnity insurance, if any, held by the licence holder or any payments made under any other law or arrangement in respect of the same losses.

(2) The Management Committee shall deduct such amount of compensation paid from the amount of compensation that may be payable to the investor in respect of any or all of the circumstances arising from this regulation.

Subrogation.

22. (1) Where the scheme has made a payment to a claimant, the Scheme shall be subrogated to the rights and remedies of that claimant against the licence holder.

(2) Prior to payment, investors shall confirm in writing to the Management Committee 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 Management Committee may require to enable the Management Committee 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 Management Committee.

Establishment of the level of compensation.

23. (1) Where two or more persons are jointly entitled to an investment account, each of these persons shall be treated as having a separate account of an amount produced by dividing the amount of the investment to which such persons are jointly entitled by the number of persons so entitled, unless there exists specific evidence or special contractual provisions determining the particular entitlements of such persons in which case such evidence shall be taken into account in determining their entitlements.

(2) Where a person is acting as trustee or nominee for one or more persons under a deed of trust or other similar agreement, the amount comprising the claim shall be deemed to belong to the beneficial owners equally, unless there exists specific evidence or special contractual provisions determining the beneficial interests of such persons in which case such evidence shall be taken into account in determining their entitlements, and provided in any event that ownership is proved to the entire satisfaction of the Management Committee.

Consumer information.

24. The Management Committee shall ensure that the general public is adequately informed about the operation of the Scheme arrangements.

Advertisements.

25. (1) Licence holders shall make available to actual and intending investors adequate and clear information concerning the applicability of the Scheme together with such other particulars as may from time to time be specified by the competent authority in a manner and form specified by the competent authority:

Provided that a licence holder shall not advertise or cause to be advertised the fact that money or instruments placed with a licence holder are protected by or through the Scheme except with the prior written consent of the competent authority.

(2) The competent authority may, from time to time, specify the information that licence holders are to provide to investors regarding

the Scheme and its operations, as well as the manner and form in which such information should be provided.

Power of the Management Committee to obtain information.

26. (1) The Management Committee may request participants, either directly or through the competent authority, to provide such information which the Management Committee may consider relevant for the proper administration of the Scheme, within a period of time as may be established by the Management Committee. The request may be addressed to the participant or to any of its directors or officials who are in possession of such information.

(2) Without prejudice to any provision of these regulations, a participant or any director or official thereof, who fails to comply with the Management Committeeís request for information within the period of time established by the Management Committee in terms of sub-regulation (1) of this regulation, or who knowingly or recklessly furnishes information, or makes a statement which is inaccurate, false or misleading in any material respect, shall be liable to an administrative penalty not exceeding Lm1,000 as may be imposed by the competent authority by means of a notice in writing and without recourse to a court hearing.

(3) Where an administrative penalty has been imposed by the competent authority in terms of sub-regulation (2) of this regulation, an appeal shall lie to the Financial Services Tribunal in accordance with articles 6 and 19 of the Act.

Respect for confidentiality.

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27. (1) Members of the Management Committee and persons appointed under sub-regulation (1) of regulation 6 shall be subject to the provisions of the Professional Secrecy Act and shall keep confidential any information obtained by them in the course of performing their duties under these regulations, and shall not reveal any information to any person, credit institution, association or entity except as may be allowed by these regulations or any other law or by Court order.

(2) The duty of confidentiality shall not be contravened in the case of:

(a) exchange of information between the Management Committee and competent authorities in other countries, or the competent authorities for the management and administration of corresponding schemes in other countries, provided that the relevant information is necessary for the discharge of their duties under these regulations; and

(b) any use or disclosure as may be required to enable the Management Committee and its officers or agents to perform their duties and carry out their functions under these regulations.

Failure to comply with obligations.

28. (1) Where a licence holder fails to comply with its obligations under these regulations, the Management Committee shall notify and consult with the competent authority and shall agree on the appropriate measures to be taken by the competent authority, including the imposition of penalties, to ensure that the licence holder complies with such obligations.

(2) If these measures fail to secure compliance on the part of the licence holder, the Management Committee shall report the matter to the competent authority for any further measure to be taken at law, including the possible restriction or withdrawal of the licence holderís licence.

(3) After the restriction or withdrawal of a licence, cover shall continue to be provided in respect of licensed business up to the date of restriction or withdrawal of the licence.

Procedures to investigate complaints.

29. The Scheme shall establish and maintain adequate internal procedures to investigate complaints against it by licence holders and by investors.

Power to issue Guidelines.

30. (1) The competent authority may issue Guidelines to licence holders for the purposes of these regulations.

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

Exemption from liability for damages.

31. The Management Committee and officers and agents of the Scheme shall not be liable in damages for anything done or omitted in the discharge of functions under these regulations unless it is shown that the act or omission was in bad faith.

Financial Year end of the Scheme.

32. The financial year end of the Scheme shall be an accounting period of twelve months ending on the thirty-first day of December of each year.

Audit.

33. The accounts of the Scheme shall be audited in accordance with International Standards on Auditing by auditors appointed by the Management Committee from among persons who are qualified to be appointed as auditors of a company under the law for the time being in force in Malta.

Cooperation with other authorities.

34. The competent authority and the Management Committee shall consult the relevant competent authorities and the persons responsible for compensation schemes in other countries outside Malta and seek to reach agreement with those authorities and persons about:-

(a) the procedures to be followed if a participant defaults;

(b) the amounts of compensation payable, after deductions if any, under each scheme; and

(c) any other aspect which is deemed appropriate for the proper management and administration of the schemes.

Transitory provision.
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35. (1) The Management Committee established under regulation 3 of the Depositor Compensation Scheme Regulations, 2003 and the Management Committee referred to in these regulations are one and the same. The Management Committee established under regulation 3 of these regulations shall continue in the personality of the Management Committee established immediately before the coming into force of these regulations and accordingly shall succeed to all its rights and obligations.

(2) All appointments, decisions, contributions, claims, payments or other acts made or taken under the Investor Compensation Scheme Regulations, 2003 before the coming into force of these regulations shall continue in force and shall be deemed to have been made or taken under these regulations, and any reference in any law to the Management Committee shall be deemed to be a reference to the Management Committee established under regulation 3 of these regulations.

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Compensation Fund.
Cap. 345.

36. The Compensation Fund established by Bye-laws in terms of the Schedule to the Financial Markets Act shall become absorbed as an integral part of the Scheme in accordance with the provisions of the Third Schedule to these regulations.

Repeals.
L.N. 6 of 2003.

37. The Investor Compensation Scheme Regulations, 2003 published on 3rd January, 2003, are hereby repealed.

First Schedule

Exclusions
(Regulation 18)

For the avoidance of doubt, the following are excluded from claiming under the Scheme and shall not be deemed to be investors for the purpose of these regulations:

(1) Sole traders, companies and other commercial partnerships;

(2) Professional and institutional investors, including:

(a) Persons holding an investment services licence under article 6 of the Act;

(b) Credit institutions carrying on the business of banking under the Banking Act;

(c) Financial Institutions as defined in article 2 of the Financial Institutions Act;

(d) Companies authorised to carry on the business of insurance under the Insurance Business Act;

(e) Collective investment schemes as defined in article 2 of the Act;

(f) Retirement funds as defined in the Special Funds (Regulation) Act; and

(g) Other categories of local and/or foreign professional and institutional investors, whether resident or non-resident in Malta, as may be determined by the competent authority from time to time;

(3) National and international institutions, governments and administrative authorities;

(4) Local and municipal councils or authorities; and

(5) Debt securities issued by the same licence holder and liabilities arising out of own acceptances and promissory notes.

Second Schedule

Contributions
in terms of regulation 12

1. Contributions

(a) Licence holders shall, every year, be obliged to contribute to the Scheme a Fixed Contribution and a Variable Contribution.

(b) The Fixed Contribution shall be paid to the Scheme annually, in every calendar year.

2. Fixed Contribution

(a) Every licence holder which participates in the Scheme shall pay a Fixed Contribution as follows:

(i) Lm 1,250 in the case of Category 2 Investment Services Licence Holders; and

(ii) Lm 7,500 in the case of Category 3 Investment Services Licence Holders.

(b) The first contribution for calendar year 2003 due by licence holders who held a licence in terms of the Act at the time of the coming into force of the Investor Compensation Scheme Regulations, 2003 shall be due before the end of November 2003.

(c) In subsequent years, payment of the Fixed Contribution to the Scheme shall be made by the 30th April of each year.

(d) In the event that a new participant joins the Scheme between 1st January and 31st December, 2003, such participant shall only be obliged to pay a proportion of the Fixed Contribution covering the period in calendar year 2003 in respect of which the participant has been in possession of a licence under the Act.

3. Variable Contribution

(a) The Variable Contribution is calculated by applying a percentage rate to the total revenue of the licence holder on an annual basis. The percentage rate for the Variable Contribution is set at 0.1 per centum.

(b) The Variable Contribution shall be accounted for in the financial year when the Fixed Contribution is paid.

(i) Investor Compensation Scheme Reserve

The Variable Contribution shall be held by the licence holder in a reserve so that the funds will be made available within 30 calendar days from the time when the Scheme makes a call on such funds in terms of regulation 16.

Funds in this reserve, which shall be called the "Investor Compensation Scheme Reserve" in all accounts and documents, shall be invested by the licence holder with a third party approved in writing by the Management Committee. Such third party shall hold the funds on pledge in favour of the Scheme and shall specifically acknowledge the rights of the Scheme as pledgee, and shall notify the Scheme in writing accordingly.

If the Investor Compensation Scheme Reserve is more than the Variable Contribution, no transfer to the Investor Compensation Scheme Reserve shall be made. This implies that when a Variable Contribution is higher than the Investor Compensation Scheme Reserve, the licence holder shall be required to make a Variable Contribution for the difference to ensure that the higher amount is always on reserve.

The Investor Compensation Scheme Reserve shall never be less than Lm300.

(ii) Investments of funds on reserve by the licence holder

Funds comprising the Investor Compensation Scheme Reserve can only be invested in listed bonds (debt instruments) and/or placed in an interest bearing bank account subject to the following:

• Minimum 25 per cent of the total amount has to be maintained in an Lm-denominated interest bearing bank account (maximum 60 day call).

• Maximum 75 per cent invested in listed debt instruments of which:

– minimum 50 per cent (in this case 37.5 per cent of the total Reserve) has to be invested in Malta Government Stocks;

– the balance (37.5 per cent of the total Reserve) may be invested in debt instruments issued by local or international entities, with an investment grade of not lower than A (Moodyís or Standard & Poorís), where applicable.

[For the sake of clarity, should a licence holder choose to hold 40% of the Reserve in a bank account, the remaining 60% may be invested in listed debt instruments, of which a minimum of 50% (in this case 30% of the total Reserve), to be invested in Malta Government Stocks, and the balance in other listed bonds as indicated above.]

The above parameters are only indicative and may be changed by Guidelines issued by the competent authority, upon consultation with the Management Committee and licence holders.

(iii) Financial reporting of the reserve

The licence holders shall be required to insert a suitable note in the annual financial statements as to the market value of the instruments in which the reserve has invested, together with a maturity schedule according to the type of instrument.

The amount on reserve will be deducted in full as an illiquid adjustment for the purposes of calculating the licence holderís financial resources in its financial return submitted in terms of its licence conditions.

4. Maximum limit of payment

Licence holders will be required to contribute to their Investor Compensation Scheme Reserve each year until such time that aggregate fixed contributions paid to the Scheme and accumulated reserves held by licence holders by way of the Variable Contribution amount to Lm1,000,000.

Third Schedule

(Regulation 36)

The Compensation Fund and the Select Committee established by Bye-laws in terms of the Schedule to the Financial Markets Act shall cease to be in effect as from the date of the coming into force of these regulations and the Compensation Fund shall as from such date become absorbed as an integral part of the Scheme subject to the following provisions of this paragraph:

(1) The Bye-laws as in force immediately before the coming into force of these regulations, shall mutatis mutandis continue to regulate any claim made by an investor in terms of Bye-law 7.03 with reference to events occurring prior to 3rd January, 2003 and any reference to the Council shall be deemed to be a reference to the Management Committee established under these regulations.

(2) (a) The portion of the Compensation Fund comprising the payments made by the Malta Stock Exchange in terms of Bye-law 7.12(b) shall be transferred back to the Malta Stock Exchange:

Provided that the Malta Stock Exchange shall keep such portion of the Compensation Fund separate and distinct from any other funds or assets;

(b) The Malta Stock Exchange shall provide an indemnity in favour of the Scheme, up to the amount of funds kept separate and distinct in accordance with the proviso to the immediately preceding sub-regulation and in proportion to the percentage of the funds constituting the Compensation Fund that have been transferred back to it, and it shall remain responsible in accordance with the provisions of the first proviso to paragraph (b) of sub-regulation (3) of this regulation, up till 3rd January, 2008, for any claims that may arise with reference to events occurring prior to 3rd January, 2003.

(3) (a) The portion of the Compensation Fund that had been paid by the members of the Malta Stock Exchange in terms of Bye-law 7.12 (a) and any other remaining funds pertaining to the Compensation Fund shall be transferred to the Scheme and shall become an integral part thereof:

Provided that a moratorium shall be allowed in favour of members of the Malta Stock Exchange who had paid such portion to the Compensation Fund as in force immediately before the coming into force of these regulations, so that their respective contributions to the Compensation Fund shall be set off against contributions now due by them to the Scheme;

(b) The Scheme shall be responsible for claims made against the Compensation Fund by investors in terms of Bye-law 7.03 and arising out of or with reference to events occurring prior to 3rd January, 2003:

Provided that claims accepted for settlement by the Management Committee shall be settled out of funds transferred from the Compensation Fund to the Scheme and the Malta Stock Exchange pro rata:

Provided further that the liability of the Scheme shall not exceed the amount of funds transferred in accordance with the provisions of paragraph (a) of sub-regulation 3 of these regulations, and the responsibility of the Scheme shall expire on 3rd January, 2008.

(4) Any reference in any law to the Compensation Fund established by Bye-laws in terms of the Schedule to the Financial Markets Act, shall henceforth be deemed to be a reference to the Scheme.