Amendment to Listing Rules

June 2011

Listing Rules Amended:	Introduction of a proviso to Listing Rules 3.03, LR5.102 and LR 5.103

By virtue of a circular dated 3 June 2011, the Listing Authority **("LA")** has communicated an amendment to the Listing Rules **("LR")** with respect to persons who are directors of companies securities of which are admitted to listing on a regulated market and who are also directors, officers, partners or employees of companies that have an investment services licence issued under the Investment Services Act (Cap.370 of the Laws of Malta) **("ISA")**.

The rationale behind the new rule is to avoid situations where the independence of directors of an issuer of listed securities may be tainted or compromised by the fact that they also occupy an official position within an investment advisory firm or vice-versa – namely that in giving advice to investment clients their independence in providing such advice to clients may be tainted or compromised or may be seen to be so, by the fact that they are directors of a company that issues instruments admitted to listing and subsequent trading on a regulated market.

In terms of a new proviso introduced to LR 3.33 *"no person may act as a Director of an issuer of a listed security if the person concerned is already a director, partner or employee and is authorised to provide investment advice/or portfolio management services in terms of Part B of the Investment Services Rules for Investment Services Providers in an entity licensed in terms of the Investment Services Act."*

This is then also repeated in new LR 5.102.

This proviso and LR 5.102 cover all listed entities to which the Listing Rules apply, be they issuers of debt or equity.

It is important to note that the mere fact of a cross directorship or of employment with an ISA licensed firm or company does not of itself render a person ineligible to occupy the post of director of an issuer whose securities are admitted to listing under the LR – for that person to be ineligible he/she must **personally** be authorised to provide investment advice or portfolio management services to clients of the ISA licensed firm or company.

Accordingly any person who is a director of a company that is licensed under the ISA to provide investment advice and/or portfolio management services – but who is not personally authorised to provide either of those services – remains fully eligible to occupy the office of director of a company whose securities are admitted to Listing under the rules.

On the other hand from a reading of the proviso (although this is to an extent contradicted in the explanatory memorandum) it seems that a person who is personally authorised to provide investment advice and /or portfolio management services, but who in effect does not provide such services would still fall within the prohibition and cannot properly act as a director of a listed company.

On a reading of the LR it would seem that the test is the individual authorisation and not the actual involvement of that person in actually providing the advice and/or portfolio management service.

Listing Rule 5.103 then regulates the position of a person who, although are not personally authorised to provide either investment advice or portfolio management services, is a director, partner or employee of a company or firm that is itself licensed under the ISA to provide such services; and is **also** a director of a company whose securities are admitted to listing. In any such case the person who falls within the above described position is prohibited to discuss matters or provide any information relating to the securities or the affairs of:

(a) The listed company of which he is a director; or
(b) Any other listed company with which the company of which he is a director has a close business relationship

with any person who is a director, partner or employee of the company or firm that is licensed to provide investment advice and/or portfolio management services.

The rule seems to very wide ranging in that it seems to prohibit **all forms of exchange of information** relating to the securities or affairs of a company whose securities are admitted to listing**.** The rule makes no distinction between information that is already in the public domain or information which is not confidential because is historical and therefore no longer potentially price-sensitive. To this extent it seems to go beyond the parameters of the Prevention of Financial Markets Abuse Act (Cap.476 of the Laws of Malta). Technically, therefore any exchange of information, even that which is out-dated or which has already been in the market – would still be prohibited, if one were to take a strict literal view of this new rule. Whilst one can understand the rationale behind this rule, to the extent that the information or affairs referred to are confidential, price-sensitive or otherwise potentially abusive in the market, it seems somewhat of an over-kill to include any information irrespective of its nature. On the other hand, the disclosure of price-sensitive unpublished information is already prohibited by virtue of the Prevention of Financial Markets Abuse Act, and the introduction of this rule 5.103 would be superfluous.

It is not clear whether it is the intention of the regulator to effectively prohibit all types of information in person who occupy these cross position between ISA licensed firms and listed companies, to a level where **any form of exchange** is prohibited or whether this should be read simply as a restatement of the rule in the PFMAA. This is an issue on which, in our view, the Listing Authority ought to provide some clarity.

The New Listing Rules will become effective on the 3 December 2011