



Opalesque Roundtable Series '16

MALTA

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Editor's Note

Malta's new "Notified AIFs" can potentially become the fund vehicle of choice within next four years

Malta as a funds and finance centre is on a healthy growth path. In 2015, 112 new funds were registered and two new custodians and 22 new investment managers were licensed. The insurance gross premium was up 33.6% year on year and pension assets were up 66% year on year, with now 38 retirement schemes and 27 asset managers in that sector.

In the early days of AIFMD, one of the main criticisms was that it was forcing regulation on investors who do not need or require the protection afforded by AIFMD and that this regulation will increase compliance costs for those type of investors that do not need or want this protection. Malta has designed a solution for these type of investors where they could, through a new regime called Notified Alternative Investment Funds structure (Notified AIFs / NAIFs) reduce their compliance costs, if they so wish because the regulation of the NAIF will be undertaken through the AIFM.

This new breed of funds has the potential to become the vehicles of choice for the industry within the next four years. **Once included in the list of notified AIFs, the fund can be passported in terms of the AIFMD and therefore marketed on a cross-border basis pursuant to the AIFMD. The new Notified AIF regime applies to not only AIFMs licensed in Malta but also to other AIFMs passporting into Malta. An influx of Notified AIF fund launches is expected already by the end of 2016.**

Notified AIFs can be managed only by a full-scope AIFM

The new Notified AIF regime will run alongside the existing AIF licensing regime. The new approach will only be applicable to qualifying or professional investors and to any structures authorized by the Maltese law and shall be managed by a full-scope AIFM. The notification model has therefore a greater reliance on licensed service providers by shifting more responsibility to them, primarily of course to the investment manager. However, the benefits of Notified AIFs should by far outweigh any negative aspects or additional liabilities placed on the investment manager.

Another great benefit lies within the fact that new funds will be able to come onto the market faster without the need to be authorized by the MFSA and will not be subject to ongoing supervision. Within 10 business days from the date of filing of a complete notification pack, the MFSA will proceed to include the AIF in the List of Notified AIF and the fund can start being operative.

The fund can be marketed to professional investors as defined in MiFID and to qualifying investors as defined in the Investment Services Rules. However, the marketing of the Notified AIFs in EU Member States other than Malta to investors other than professional investors as defined above is not automatic and may be allowed subject to national provisions applicable in the respective jurisdiction as prescribed in Article 43 of the AIFMD.

This Roundtable explains the characteristics and benefits of Notified AIFs and also lists the categories of AIFs which are excluded and cannot be Notified AIFs. Alongside the AIFs, which until now the authority has always regulated and supervised, Malta also offers the **Professional Investor Fund (PIF) regime**, which was retained for the de minimis fund managers which fell outside the scope of the AIFMD and third country fund managers. The PIF funds provide a "lighter" regulatory regime and more flexibility than UCITS, AIFs and other funds which are also licensed by the MFSA. Malta's PIF regime has been a great success. Read in this Roundtable how MFSA is currently reviewing the PIF regime.

The Opalesque 2016 Malta Roundtable took place in May 27th 2016 at the office of the MFSA in Malta with:

1. Professor Joseph Bannister, [Chairman, Malta Financial Services Authority \(MFSA\)](#)
2. Dr Christopher Buttigieg, [Director Securities and Markets Supervision Unit, MFSA](#)
3. Dr Isabelle Agius, [Senior Manager Regulatory Development Unit, MFSA](#)
4. Angele Galea St John, [Director Authorisation Unit, MFSA](#)
5. Joseph Agius, [Deputy Director Securities and Markets Supervision Unit, MFSA](#)
6. Robert Higgans, [Deputy Director Authorisation Unit, MFSA](#)
7. Paul Mifsud, [Managing Director, Sparkasse Bank Malta](#)
8. Dr Joe Saliba, [Partner, Saliba Stafrace Legal](#)
9. Julian Borg Gauci, [Investment Manager, Scotstone Fund Managers](#)

10. Jacques Ellul Soler, [Portfolio Manager, Temple Asset Management](#)

11. Vincenzo Zinnà, [Equity and Index Sales, Eurex](#)

The group also discussed:

- What differentiates Malta compared to other jurisdictions?
- How to apply for a Notified AIF?
- How fast can a licensed AIF be set up?
- Can AIFs be launched with €5-€10 million AUM only?
- What attracts smaller managers to do business with Malta?
- What is behind the strong growth of securitization vehicles and structures in Malta?
- How do regulators prepare for supervisory convergence?
- What are the benefits of hedging a portfolio with Volatility derivatives?

Enjoy!

Matthias Knab

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Participant Profiles



(LEFT TO RIGHT)

Matthias Knab, Vincenzo Zinnà, Paul Mifsud, Joe Saliba, Angele Galea St John, Christopher Buttigieg, Jacques Ellul Soler, Julian Borg Gauci, Joseph Bannister, Isabelle Agius, Joseph Agius, Robert Higgins.

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Introduction

Joseph Bannister

Malta Financial Services Authority

Joseph Bannister, I am the Chairman of Malta Financial Services Authority.

Vincenzo Zinnà

Eurex Exchange

My name is Vincenzo Zinnà, shortly named Enzo. I work in the Zurich office of Eurex Exchange, the derivatives entity of Deutsche Börse Group. I am in the Equity and Index sales department, responsible for institutional clients in Switzerland and in Italy. In Italy I am also responsible for banks. I introduce them to our latest products and services and try to support them in times of growing regulatory rules. In consultations with my customers I strive to find efficient solutions by using our derivative instruments.

Paul Mifsud

Sparkasse Bank Malta plc

My name is Paul Mifsud. I am the Managing Director of Sparkasse Bank Malta plc. Sparkasse Bank Malta forms part of the Austrian Savings Banks and has a physical presence in Malta. From Malta, the bank provides banking, wealth management and depositary services to funds mainly UCITS and AIFs. The bank currently employs 57 people from Malta directly and operates from its offices in Sliema. Sparkasse Bank Malta seeks to grow its presence in Malta as it sees Malta of strategic importance for its growth plans especially in developing its depositary function.

Julian Borg Gauci

Scotstone Investments

My name is Julian Borg Gauci. I head the operations of Scotstone Investments in Malta. Scotstone's services mainly focus on helping small fund managers establish themselves in the industry. Our services consist of asset management hosting services via our de-minimis AIFM license and platform umbrella hosting services via the SICAV structure.

We currently manage a fund of funds with an AUM of around \$25m and service six Professional Investment Funds (PIFs) via our platform umbrella SICAV structure.

Joe Saliba

Saliba Stafrace Legal

My name is Joe Saliba, I am a partner at the local law firm, Saliba Stafrace Legal, which has financial services as main areas of practice, with a particular focus on setting up of and ongoing advice to funds, investment firms (including investment managers, advisors and custodians), and also corporate law and general commercial law.

Isabelle Agius

Malta Financial Services Authority

I am Isabelle Agius, and I am a lawyer by profession. I am employed within the Regulatory Development Unit at the Malta Financial Services Authority. My work focuses mainly on transposition of European directives within the Maltese legislative framework, with particular focus on funds and investment services providers.

I was involved in the transposition of the Alternative Investment Fund Managers Directive, UCITS IV and V. Currently I am involved in finalizing all the legislative texts relating to the latest product, the Notified AIF.

Joseph Agius

Malta Financial Services Authority

I am Joseph Agius. I have been working for the Malta Financial Services Authority for the past two years. I am the Deputy Director within the Securities and Markets Supervision Unit and in charge of fund supervision. Prior to joining MFSA, I worked for 15 years in the fund industry in senior roles within investment management, fund administration and depositary services.

Christopher Buttigieg

Malta Financial Services Authority

I am Dr Christopher Buttigieg, Director of the Securities and Markets Supervision Unit, MFSA. I am also a lecturer in the Banking and Finance Department of the University of Malta.

Robert Higgans

Malta Financial Services Authority

My name is Robert Higgans. I am Deputy Director at the Authorisation Unit of the Malta Financial Services Authority. The Authorisation Unit is responsible for reviewing and processing applications for all types of licenses submitted under the respective sectors of the financial services industry. My main area of responsibility is the securities field, where I head a team responsible for reviewing applications for licenses submitted under the Investment Services Act, this being the Act regulating the provision of investment services activities as well as the establishment of collective investment schemes.

Jacques Ellul Soler

Temple Asset Management

My name is Jacques Ellul Soler. I am a Portfolio Manager at Temple Asset Management. We are a UCITS investment management firm as well as a full scope Alternative Investment Fund Manager (AIFM), which has been operating for five years. My main role is co-portfolio manager for the Temple Global Equity funds, recently rated five star by Morningstar and among the most rated in Malta according to Citywire. On the AIFM side, we offer third party fund promoters our expertise in order to facilitate the launch and management of their AIF.

On a personal level, I also act as a director, risk manager and investment committee member on various boards of UCITS and AIFMD firms.

Angele Galea St John

Malta Financial Services Authority

My name is Angele Galea St John. I am the Director of the MFSA's Authorisation Unit which is responsible for coordinating the processing of applications for regulated financial services activities. I am also a lecturer within the Faculty of Economics, Management and Accountancy at the University of Malta.

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Eurex Exchange – the home to the euro yield curve.



Matthias Knab

Malta has recently announced the launch of a new investment framework applicable for notification of Alternative Investment Funds - the “Notified AIFs” or NAIF.

The new approach will only be applicable to qualifying or professional investors and to any structures authorised by the Maltese law and shall be managed by a full-scope AIFM. The AIFM will assume full responsibility for the Notified AIF and for the fulfillment of the obligations of the Notified AIF. EU/EEA AIFMs may submit a notification to the MFSA for an AIF to be included on the List of Notified AIFs. Third country AIFMs will be able to submit a request for notification of an AIF once the country where these have been established has been granted passporting rights pursuant to the AIFMD.

The great benefit lies within the fact that new funds will be able to come onto the market faster without the need to be authorised by the MFSA and will not be subject to ongoing supervision. *Within 10 business days from the date of filing of a complete notification pack, the MFSA will proceed to include the AIF in the List of Notified AIF and the fund can start being operative.*

Could you please give us an update on how far you are with the implementation and what is your outlook about the future growth and the acceptance of this new vehicle?

Isabelle Agius: Traditionally the Authority has always been oriented towards regulating the authorisation and supervision of funds as well as the authorisation and supervision of service providers. This approach was adopted when the Authority was transposing the UCITS Directive and was further consolidated when the Authority transposed the AIFMD. So, even though the AIFMD sought to regulate the fund manager, the Authority went a step beyond this and regulated both the fund manager and the product i.e. the AIF.

Alongside the AIFs, which until now, the Authority has always regulated and supervised, one can find the PIF regime, which was retained for the *de minimis* fund managers which fell outside the scope of the AIFMD and third country fund managers.

Currently the Authority is reviewing the PIF regime, and alongside this exercise, the Authority is also proposing a regime applicable to Notified AIFs. *Through the Notified AIFs, the Authority is proposing to remove the additional layer of supervision and therefore instead of regulating the product, the Authority is focusing its regulatory and supervisory efforts on the fund manager, in line with the AIFMD.*

Therefore, in terms of the Investment Services Act (List of Notified AIFs) Regulations, the AIFM files with the MFSA a request for an AIF to be included in the List of Notified AIFs. The Investment Services Act (List of Notified AIFs) Regulations are further supplemented through a chapter in the Investment Services Rules for Investment Services Providers.

The fund manager must be either a full scope AIFM as defined in the AIFMD and licensed in terms of the Investment Services Act or an EU AIFM passporting into Malta in terms of Article 33 of the AIFMD. Article 33 of the AIFMD has been transposed into the Investment Services Act (Alternative Investment Fund Manager) (Passport) Regulations.

Not all the AIFs can be Notified AIFs: self-managed AIFs cannot be Notified AIFs, obviously because the functions which in a third party managed fund are carried out by the AIFM, in such a case would be carried out internally by the fund's investment committee. In the case of the Notified AIFs, both the AIFM and the governing body of the AIF must take responsibility for the fund.

Property funds i.e. funds investing in property and loan funds cannot be Notified AIFs. Similarly, funds which invest in instruments and assets other than the financial instruments listed in Section C of Annex I of the MiFID cannot be Notified AIFs.



Lastly, a collective investment scheme which is already licensed in terms of the Investment Services Act cannot convert to a Notified AIF.

Another new element which the Authority is introducing in the Notified AIFs regime is the requirement that the fund manager carries out the necessary due diligence on the members of the governing body of the AIF and on the service providers of the AIF prior to submitting the request with the Authority. The fund manager must be comfortable that the proposed governing body of the fund satisfies the “fit and proper” requirements. The AIFM must also carry out the necessary due diligence on the proposed service providers of the fund. In this regard, the Authority will be issuing Guidance Notes providing an outline on the manner in which the AIFM is expected to carry out the due diligence assessment. Once the AIFM has everything in place and has compiled the required notification pack, the notification can be submitted to the Authority. In terms of the investment Services Rules, the AIFM is required to appoint a Money Laundering Reporting Officer.

The notification pack consists of a notification form together with the following documents which the AIFM is required to collate namely: (a) a prospectus which conforms to the necessary requirements indicated in the Rules; (b) the AIFM should also include a resolution of the governing body of the AIF which certifies that the prospectus has been drafted and compiled in accordance with the requirements stipulated in the investment Services Rules; (c) a self-certification by the AIFM in which it certifies that, having regard to any delegate manager(s) or advisers it has in place, it has the necessary competence and experience to manage the AIF and monitor effectively any delegate; (d) a joint declaration by the AIFM and the governing body of the AIF by which each undertakes responsibility for the Notified AIF, including, inter alia, the obligations arising under the AIFMD; and (e) a declaration by the AIFM confirming that it has carried out the necessary due diligence with regard to the service providers and the governing body of the AIF. This declaration must include a statement that the AIFM is satisfied with the outcome of this due diligence exercise and there are no untoward features.

The notification pack should be submitted to the Authority within 30 calendar days from the date of the resolution of the governing body of the AIF. Once that has been done, the Authority will proceed to include the AIF in the List of Notified AIFs within 10 working days from the date of submission. The Authority will proceed to do this only where the notification pack is complete with all forms duly signed as required. Once included in the List of Notified AIFs, the Notified AIF can be passported in terms of the AIFMD and therefore marketed on a cross-border basis.

The Investment Services Act (List of Notified AIFs) Regulations also provide for a procedure whereby the Authority is notified of any change in the prospectus. Provision is also made for the instances where the AIFM can request the Authority to remove the AIF from the List of Notified AIFs, in which case then the fund will be liquidated.

The fund can be marketed to professional investors as defined in MiFID and to qualifying investors as defined in the Investment Services Rules. However the marketing of the Notified AIFs in Member States other than Malta to investors other than professional investors as defined above is not automatic and may be allowed subject to national provisions applicable in the respective jurisdiction.

Matthias Knab

You referred to the governing body of the fund, is there a formal definition of this body?

Isabelle Agius

It depends on the structure which the fund adopts. If it is a SICAV, it will be the board of directors; if it is a limited partnership, it will be the general partner. In terms of the Investment Services Act (List of Notified AIFs) Regulations, the fund can be established in any structure which is available under Maltese legislation namely: SICAV, INVCO, and unit trust, contractual funds, incorporated cells, and it can even be part of a platform in terms of the Companies Act (Recognised Incorporated Cell Companies) Regulations. The fund can be closed-ended or open-ended.

Joseph Agius: Isabelle did give a very comprehensive overview of what our Notified AIF regulatory framework will look like when it is eventually launched in the near future. One question that would come to mind when fund promoters are evaluating to set up a fund in Malta or whether to set it up in an alternative jurisdiction is:

What would differentiate Malta compared to other jurisdictions?

My view is that Malta`s proposed regulatory framework has the following advantages:

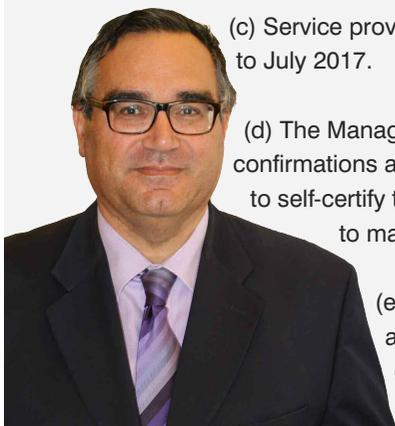
(a) Malta will be introducing a number of safeguards for the protection of investors. One of these main safeguards is that the AIFM would need to undertake due diligence on the fund directors and its service providers. Such due diligence must meet minimum quality standards, be sufficiently robust and well documented. My team would eventually undertake sample checks and this exercise would form part of our on-site inspection program, probably starting from 2017.

(b) Isabelle did mention that time to market is 10 business days whereas in other jurisdictions, notification/licensing is either automatic or within 24 hours. Whilst the MFSA will not be undertaking a thorough in depth review of documents submitted to it because it is not feasible to do so within notification timelines, we will be looking to see that certain minimum requirements of the Notified AIF are in place.

(c) Service providers can be located outside Malta and in the case of the depositary this would be restricted to July 2017.

(d) The Manager of the Notified AIF would need to provide the Authority with a number of written confirmations as part of the notification pack. These confirmations must include one where the Manager has to self-certify that the necessary competence, experience and skills are available within its set up to be able to manage the Fund competently and effectively in the best interests of investors.

(e) MFSA will be launching a number of templates for Fund Prospecti which would need to be adopted for new Notified AIF set ups. This will ensure that certain minimum standards in fund documentation is maintained.



Robert Higgins: Basically, the Notified AIF is a new regime which will run alongside the existing AIF licensing regime available in Malta for full scope AIFMs based locally or passporting in terms of the AIFMD. It is a regime which will not apply to all types of AIFs, as Isabelle pointed out, as there are certain categories of AIFs that will not be eligible for notification under this new regime. As explained, this regime will rely on the regulation and supervision applicable at the level of the fund manager in terms of the AIFMD.

Another key aspect is that, in terms of the framework applicable for Notified AIFs, the fund manager will also be responsible for due diligence on key parties to the scheme, like for example, on the Board of Directors for those schemes set up as investment companies. We highlighted earlier that a document will be issued to provide guidance to the AIFM fund manager as to the due diligence process expected in this regard. *The fund manager would have to retain certain records of the due diligence undertaken, with due diligence being not just done at notification process, but also required to be maintained on an ongoing basis.* The AIFM will thus be obliged to ensure the ongoing fitness and properness of key stakeholders throughout the life of the fund.

Non-compliance with the regulations and rules that will be issued for this new regime may result in the AIF being removed from the list of Notified AIFs and subsequent liquidation of the fund.

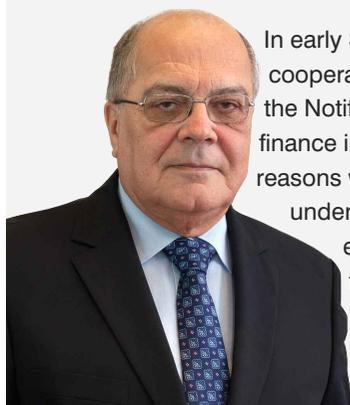
A register will be maintained by the MFSA of the funds that are notified and such list of Notified AIFs will be publicly available through the MFSA`s website.



I am sure the authority and also the service providers involved will have made some projections or assumptions how this new Notified AIF regime may be embraced by the industry?

Joseph Bannister: These things could happen quickly, we know that there is already a person with at least three applications. It has been received very well locally and also extremely well internationally. The law firm Simmons & Simmons as well as Dechert have issued good reports on it. Just yesterday I heard a journalist ask a London law firm also about it, and they said the Malta Notified AIFs would place Malta even ahead of Luxembourg. It's filling a gap in the industry, it's what the industry wants.

So I think the important thing is that there is international endorsement that it's a good product, and more people will get to know and use it. Also, remember we are still in the middle of launching it, and there still has to be a lot of communication and training to be done. After having published all the things we talked about, we will first have a seminar with local and then also with the foreign practitioners, so probably around December we will have a good idea about the reception of the product.



In early September we'll also have the Swiss Capital Markets Forum, a meeting about the Swiss-Malta cooperation on asset management. One of the topics is obviously asset management in Malta and here the Notified AIFs would be brought to the forefront of the Swiss finance industry. Although the Swiss finance industry seems to prepare the old PIF regime and not the new NAIF regime was one of the reasons why we as the only jurisdiction had decided to retain the old regime separately. I can essentially understand their reasons, because often private banks may have money from family offices, for example, and in such a set up, you don't really require the European label et cetera. Those sort of funds don't really need the European regulatory dimension. Still, the number of AIFs keeps increasing.

Joe Saliba: From my perspective as a lawyer and industry practitioner, it's a welcome innovation from a regulatory perspective. I think we need to clarify that more than a new product, it is simply an alternative to having a fully regulated product, because in effect we are not reinventing the wheel in terms of products here, we are still dealing with an AIF which has been in place now for the last three years.

In my view, the Notified AIFs are a welcome response from the Authority to actually expedite the process of going to market and launching the funds. The Notified AIFs are perfectly permitted by and in line with the Directive, as Isabelle was saying. The AIFM Directive is not concerned about regulating the product and for the first time in Maltese regulatory history we are allowing the establishment of funds (as a product) which are not per se regulated. This funds would be indirectly still regulated to some extent through the regulation of the manager (which has to ensure that the fund meets various requirements), but the product per se is not. This is in contrast to UCITS, for example, where the UCITS fund per se is regulated by the UCITS Directive, and not just the UCITS manager.

Without removing any merits from the decision and policies of the Authority, I still believe though that the Notified AIFs still need to pass the test out there in the market, in the sense that fund promoters and managers, and the targeted investors, may shy away from a non-regulated product (particularly in the current post-financial crisis state of mind). We are still feeling the aftermath of the financial crisis where investors got more risk adverse, and some of them might actually prefer to have a regulated product rather than a non-regulated one. The non-regulated AIF may therefore prove unattractive on that basis.



So it very much depends on the risk appetite of investors to whom these funds will be marketed. Furthermore, certain institutional investors like pension funds or maybe also some fund of funds might not actually be permitted (by their internal rules or the laws to which they are subject) to invest in this product, simply because it's not regulated. So that's a test which still has to come and we have to go through.

At this point, I also believe that some fund managers and industry practitioners have questions about the rationale behind the exclusion of some of the fund categories from the NAIF regime, for example property funds. Regarding loan funds, another excluded category, the exclusion is more readily understandable, because locally there are the specific loan fund rules and requirements which apply, so it is to be expected that the Authority would want to keep control over these funds (through licensing) to make sure that the fund satisfies those rules.

Another concern would be that the Notified AIFs could potentially be seen as creating some sort of discrimination against de minimis managers and PIFs which are not (as yet at least) eligible to the NAIF regime. At the current launch phase, people will of course understand that the Authority opens up this new possibility only for AIFs, however sooner or later, especially if this will be successful, various de minimis managers, with PIFs etc. will knock at our doors and say, *"This is great, but we want to be able to do it as well..."*

Joseph Bannister: Loan funds are being governed by certain ECB directions, so we felt that they shouldn't be included in the Notified AIF regime, it would be too complicated. What I can say is that the long fund regime is heavy, I believe we have approved three funds so far.

When it comes to property, we have heard that direct property holdings in a fund could raise an issue and we have some legacies here, so essentially our view is that those would rather fall under private equity via a SPV (Special Purpose Vehicle).



There are still some minor things open in terms of exceptions, and these are being dealt directly with relevant managers to find solutions or directions how to work those issues out.

In terms of notification, I think we are fine. Once the legal notice and the rules, the pro forma prospectuses and everything will be ready, we will put it onto our website as a package. We also have an amendment ready for the tax legislation. We will exempt the notified funds similar to the licensed funds, and then after that we start looking at issues of supervision.

From talking to various international managers we would expect shortly to be processing about six applications.

Robert Higgins: When it comes to loan and property funds, it is important to point out that there are certain requirements that were specifically adopted in our local regulatory regime for these particular type of funds. Such requirements, which are primarily home grown, are not reflected or captured in the AIFM Directive.

One attractive feature of Notified AIFs is the time to market whereby following receipt of the relevant documentation, the Authority will process such application within 10 working days. This is however based on the premise that the structure is AIFMD compliant due to the regulatory status of the manager.

In light of the additional requirements applicable under the local regulatory regime for loan and property funds and taking into consideration that the **Notified AIF regime applies to not only AIFMs licensed in Malta but also to other AIFMs passporting into Malta,**



it was considered that the Notified AIF regime would thus be more appropriate to those type of funds whose investment objectives and policies are limited to the typical investment instruments, such as those listed in the MiFID Directive and which are accordingly not subject to additional conditions other than those specifically captured by the AIFMD.

Whilst the AIFMD is broad and is not limited to the management of investment instruments but also other types of assets, one needs however to be conscious of the additional framework and specific regulatory requirements applicable to the particular type of funds like the ones mentioned.

It would thus be advisable to see how the regime will work out in practice within the initial parameters that have been set out. Following experience garnered in dealing with the new regime, the MFSA could possibly consider the expansion or otherwise of the eligibility criteria or any other changes that may be appropriate to such a regime. Opening such a regime to other type of funds at this stage seems however premature.



Joseph Bannister: I just found some quotes. One quote is, “I would expect an influx of Notified AIF fund launches by the end of the year.”

Another quote is: “Malta’s Notified Funds, alongside with the Luxembourg RAIF, fulfills the need in the market for semi-regulated vehicles of this kind. Avoiding double regulation is a good thing for Professional Investor Funds. These two new breeds of funds, Luxembourg and Malta, have the potential to become **the vehicles of choice for the industry within the next four years.**”

Joseph Agius: I think Joe Saliba has a point in that the investor has the ultimate say in deciding what type of structure the fund manager will adopt. There are investors, including institutional investors, like, for example, pension funds or insurance companies, that insist on highly regulated vehicles, ie, UCITS.

But here we are speaking about funds in the alternative space that are caught under the Alternative Investment Fund Managers Directive. **I recall in the early days of AIFMD one of the main criticisms was that it was forcing regulation on investors who do not need or require the protection afforded by AIFMD and this regulation will increase compliance costs for those type of investors that do not need or want this protection.**

So basically we are here offering these type of investors a way where they could, through, a NAIF structure fund reduce their compliance costs, if they so wish because the regulation of the NAIF will be undertaken through the AIFM. But at the end of day, as Joe Saliba said, the investor will decide on what type of regulated structure they will go for.

As regards to Joe’s question regarding the extension of the NAIF to the PIF regime, I can share with you that when I go to conferences and seminars, I am invariably asked this question, “When are you going to extend the NAIF to the PIF regime?”

My own personal view is that as an Authority we should see how regulatory regime beds in within our current framework and how it will work out in practice, before we should consider extending it to the PIF regime.





Isabelle Agius: Most probably, the industry is interested in replicating the processes applicable to Notified AIFs to the PIF regime for the purposes of expediency to launch and market the fund. However, the Authority is currently reviewing the PIF regime by streamlining, reducing categories of PIFs, and also assessing the internal processes relating to the authorization of the actual fund.

Julian Borg Gauci: I think the MFSA's innovative approach of introducing the Notified AIF regime will continue towards helping Malta compete with the top European fund jurisdictions, as it gives the fund owners the option to speed up the Fund set-up application process.

Having said that, I do agree with some of the points Joe Saliba mentioned with regards to a Notified AIF being semi-unregulated, and that it will need to go through a test run to be able to give us an in-depth evaluation of its potential success.

What we do know for certain is that it will put more pressure on the fund manager to ensure that all the regulatory requirements of the fund are being adhered to - this of course on top of the AIFM Directive itself being honored. However, it opens quite a number of opportunities for these same fund managers, and it would thus be to their advantage to invest in the relevant resources required to ensure that this regime is a success.

I do not believe this regime should have any major impact on raising capital as this will be dependent on the fund manager, who is ultimately a regulated entity.

To conclude, I think that the Notified AIF regime will ultimately be a successful regime, and as a representative of a Fund Management Company with a de-minimis license I would eventually like to see such a regime applied on PIFs as well, also considering that Malta has a larger number of PIFs.



Joe Bannister

The good thing is the Notified AIFs are now receiving also interests from service providers, which means that if the AIFs grow, the service providers will grow as well.

Paul Mifsud: I have got two comments that I would like to just raise in this regard.



The first being that we have a clear signal from the regulator that it is willing to develop the notification model by placing more 'reliance' on licensed service providers by shifting more responsibility to them. In this case the onus lies with the investment manager. This concept is a most welcomed development and should be opened up to other heavily regulated entities like banks, depositaries or even fund administrators.

The concept of leveraging on highly regulated firms to facilitate a fund structure (or other similar structures for this purpose) makes a lot of sense and gives further scope and value to such licensees.

It will be interesting to see however how this process will develop - as to whether service providers will be willing to assume the extra responsibilities this notification will bestow upon them. Needless to say, risk appetites will vary, and for the more risk averse managers this may be a no go territory.

On the other hand, this may be a perfect opportunity to those willing to leverage upon their already developed infrastructure and risk process to take a larger share of the market.

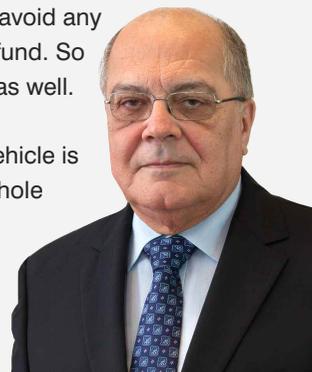
Secondly, I tend to agree with what was discussed earlier that licensing of any structure geared to soliciting funds from third parties is imperative. Banks, pension funds and private investors all seek licensed vehicles into which to place their funds. Furthermore, obtaining simple bank accounts for unlicensed entities certainly represents a challenge nowadays.

It is on this point that I was wondering whether there was any thought or any discussion about potentially licensing a structure at the top, i.e at SICAV level, and then use the notification process for all underlying sub-funds to the scheme.

In this manner the underlying sub-funds would emanate from a licensed SICAV that would have undergone regulatory scrutiny.

Joseph Bannister: We have considered those sorts of permutations and combinations. We have to avoid any inconsistencies in the sense that we cannot have a licensed fund and underneath it a notified a sub-fund. So automatically the whole construct will be an umbrella structure with the sub-vehicles being licensed as well.

Just a correction, when you said the SSC, remember that this vehicle is not licensed either. So the vehicle is not licensed in that sense, but I would suggest that wait and see as to what will come out from the whole licensing process, which is also being revamped. The fact that some people would prefer the whole complex to be licensed was taken into account, but then you must review also the licensing process to lighten the problems.



Jacques Ellul Soler: I can also confirm that we have received good feedback about Notified AIFs from fund promoters who are inquiring to work with us. From experience we have noted that professional investors (AIF investors) are more time-sensitive; so being able to speed up the process is helping us in the sales process and fulfilling client demands.



It is true that this new regime is putting a lot of the onus and liability on the manager; however, when onboarding AIFs, Temple Asset Management already applies a rigorous due diligence process with competent and reliable procedures, thereby facilitating the implementation of the new process. Overall the **benefits of Notified AIFs should by far outweigh any negative aspects or additional liabilities placed on the investment manager.**

Vincenzo Zinnà

I have a few questions. One question is, how long do you think it will take from the idea to finally launch a licensed AIF, and would there be certain things along the thoughts of Paul that could make it easier or faster? Also, will it be allowed to put derivatives in these Notified AIFs?

Robert Higgins: Yes, derivatives are allowed as an underlying instrument of a Notified AIF. There are no issues with having derivative instruments in a Notified AIF structure if the respective AIFM is duly licensed by its respective regulator to undertake investment management in relation to such instruments. The issues that we talked about earlier are with particular type of funds, like loan and property funds, which are subject to certain existing additional regulatory requirements applicable locally.

Regarding the timing of a licensed AIF, this will depend on a number of factors. Basically, a lot will depend on how fast we receive replies to our due diligence enquiries and thus on the finalisation of the fitness and properness test, the quality of the documentation provided, the adequacy of the structure and governance arrangements and issues discovered during the review process.

As to the ideas of making the process easier and faster, there are a number of measures in this regard like, for example, the review of the existing application forms and re-organisation of the Rulebooks. The MFSA is also in the process of streamlining the funds regime as communicated recently to the industry with changes to be made to both the PIF and current AIF regime. In this regard, there will be a **consolidation of the different type of categories of PIFs and AIFs** that are currently allowed. With respect to the PIF structure, for example, there are currently three types of PIFs - one targeting Experienced Investors, one for Qualifying Investors and another one targeting Extraordinary Investors. The Experienced and Extraordinary Investor Funds will no longer be available going forward, and a new definition will be issued for Qualifying Investors replacing the existing one. So, when it comes to the PIF structure, there will just be one streamlined structure, this being the PIF targeting Qualifying Investors. The same approach will be adopted for the current AIF licensing regime.



Matthias Knab

Let's go back to giving a general overview on how Malta has evolved and how Malta keeps evolving. We talked about the Notified AIFs, which is one component of that.

Yesterday many of us were at the yearly FinanceMalta conference, and let me share some of the notes that I took. In 2015, 112 new funds were registered in Malta. Two new custodians and 22 new investment managers were licensed. The insurance gross premium is up 33.6% year on year and the pension assets are up 66% year on year, with now 38 retirement schemes and 27 asset managers in that sector. What else has happened?

Vincenzo Zinnà

Perhaps before you respond, it is my first time in Malta and yesterday at the FinanceMalta I really could observe how the whole industry here is working together and creating synergies. Not only the Prime Minister, even someone like the Chief Risk Officer of HSBC said we have to be fast and innovative. And I really think this is the first time I have heard a Chief Risk Officer being committed to be fast and being collaborative, because usually the first thing a Chief Risk Officer will say is "No". It was a pleasure for me to see you all here are open to growing the business.

Jacques Ellul Soler: Yes, Malta is developing fast, and offers good opportunities for local and international players. We initially launched as a UCITS investment manager and our core focus remains to raise AUM for our in-house Temple UCITS sub-funds.

Since the implementation of AIFMD we have however been approached by several fund promoters wanting to set up their AIF in Malta. It was then that the board of Temple Asset Management decided to "opt-in" and become a full scope AIFM.

The majority of the enquiries we received came from small to medium-sized firms wanting to launch their AIF with around €5-€10 million AUM. Generally, due to the small size of their Fund, most of these fund promoters prefer teaming up with an already established and experienced AIFM like Temple Asset Management, rather than set up their own licensed management company. The idea is that they can leverage on our own expertise and launch their Fund in a more expedite manner and at a lower cost.



Once the funds grow to certain levels of AUM and the third party fund promoters have acquired more experience, it will be much easier for them to set-up their own management company and move their AIF under their own full control.

We are happy to onboard such promoters even though for a short period of time; it is additional revenue to the company but since we already have in-house experience and sufficient resources we decided to exploit such business anyway.

Matthias Knab

Why do you think those companies and managers approach you and want to make business with Malta; is mainly because of the lower costs you can offer?

Jacques Ellul Soler: I think it's a mix of all. As mentioned earlier, I believe the "Malta Product" is very competitive, with a robust and reliable infrastructure that we have in place thanks to the MFSA.

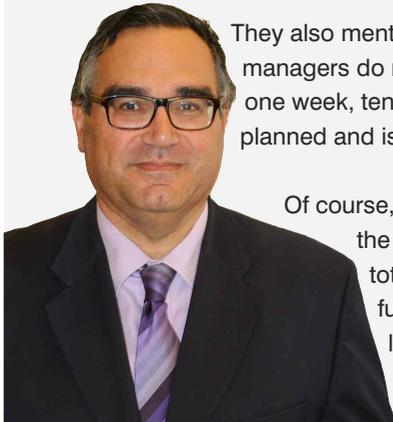
A case point is that of Temple Asset Management shareholders' experience when they decided to move to Malta. Luxembourg and Dublin were too expensive jurisdictions to be based in for the kind of AUM, approximately €25 million, they wanted to launch with. A number of visits to smaller jurisdictions and meetings with regulators were conducted over the course of a few weeks but it transpired that none of them gave them the confidence to set-up and establish their business. On visiting Malta and meeting with the MFSA, the first impact was immediately good. They could sense that apart from Malta having a strong regulatory framework the MFSA were very approachable and open to discussion. They provided suggestions and came up with solutions not only on how to facilitate setting-up the business in Malta, but also on how to construct a stronger business model and succeed over the longer term. Thus, **communication with the MFSA and the guidance provided were the main factors why they eventually opted for Malta**, something which most other jurisdictions lacked. On top of that, needless to say, there were other important considerations taken into account, such as the quality of human resources, strong IT knowledge and infrastructure as well as the beneficial tax rates.

Having said that, we do face certain hurdles when trying to attract new investors to invest in our Maltese funds but this has more to do with the UCITS side of our business. When facing international investors, the first part of the meeting is spent providing awareness on Malta and discussing the pros of a Maltese fund. Such investors are more accustomed to Luxembourg or Irish domiciled funds. Having said that, EU regulations puts everyone on a more or less even footing and we believe Malta has sufficient attributes to attract good volumes of financial services businesses.



Joseph Agius: When I was working in the industry before joining the MFSA, I often met fund managers and used to ask why they chose Malta to launch their fund/asset management company here. With a harmonised EU regulatory framework, there are a number of similarities across the EU, and we are basically working with the same rule book. So why do they come to Malta?

Most of them are attracted to Malta through the **strong pro-business ethic** that Enzo referred to earlier on. We have lawyers, accountants and firms that are keen to support fund managers in the launch of their business initiative and they do so actively and with enthusiasm. So when fund managers come to Malta, they see cooperation from a spectrum of service providers for their fund to be launched professionally and with a relatively short time to market.



They also mention the regulator. I am saying this not because I am now working for MFSA, but fund managers do mention that the regulator is accessible, they can set up meetings with the regulator within one week, ten days at the most, and this helps them significantly, especially when the fund is being planned and is in the course of being launched.

Of course, there is also the cost factor, especially for those funds that are at an incubation stage, where the seeding of the fund is not that large and where higher costs would have a material impact on total expense ratio. Lower cost levels also attracts them to Malta, because when you set up a fund in Malta, the cost basis is different from other established jurisdictions which makes the launch of such funds in these jurisdictions not viable.

Julian Borg Gauci: I concur with a lot of the points Jacques mentioned and will add that one of the main reasons managers choose Malta as a jurisdiction is purely because it offers value for money as a whole, something that other jurisdictions struggle to offer.

For instance, from a business perspective, when compared to other fund jurisdictions, **Malta is one of the most, if not the most cost-effective**, which is a factor every business should initially look out for. One also needs to take into account what level of service is offered by the jurisdiction's regulator, since this can deem to be tedious in the initiation stage, and as outlined earlier, the Malta Financial Services Authority has proved to be a regulator that is easily approachable and always very keen to work towards growing Malta's Fund industry by listening and understanding the needs of the industry. The next step is making sure that the jurisdiction offers a high level of service providers that are capable of guiding and understanding the requirements which will ultimately help reach the objectives, and Malta's workforce has proven itself time and time again with the knowledge and ability to comprehend the industry from both a business and regulatory perspective.

Advantages however do not just stop there, as from a personal level, besides tax benefits (which are also applicable from a business perspective), Malta also offers a very well spoken English population (since English is our second language), automatically eliminating any communication barriers, amazing weather conditions, a very good educational system and living conditions as a whole.

It is no wonder why, like Temple Asset Management's shareholders, Scotstone's South African shareholder took the same decision to set-up the business in Malta.

I therefore strongly urge those who are thinking about Malta as a potential jurisdiction of choice to carefully compare the pros and cons with the other few competitive European jurisdictions, as they may be surprised to find out how much more Malta can offer towards their business objectives.

I only feel that we do however need to do more from a marketing perspective so that we attract the larger service providers, especially custodians. Who knows, maybe the eventual launch of the Notified AIF regime will be the boost we require!



Joseph Bannister

I could already observe that Notified AIFs are attracting service providers, so we will have to see what happens with the forthcoming ones. It's very clear that service providers follow the managers, and the influx of certain recent managers who were involved with certain service providers before is generating this synergy.

Matthias Knab

Are there any other relevant trends that you would like to discuss?

Joe Saliba: We see a growing interest in setting up **securitization vehicles** and securitization structures in Malta. To some extent, these vehicles serve as alternative methods of raising finance and to some extent may also offer an opportunity to serve as alternative methods to what otherwise would probably be regulated structures. One example would be the repackaging of managed accounts into asset back securities (notes) which can then be offered to investors.



I do appreciate as a professional that on the one hand it's a very interesting opportunity for product innovation, and the fact that it is not regulated can also make it very appealing. On the other hand it can be subject to abuse, and so we have to be all very cautious.

I do wonder what's the authority's current view about that and how it looks at it as an unregulated product going forward, and whether any specific measures are being taken in that respect or whether right now this is as usual?

Joseph Bannister: For start, Malta has had a securitization law for a very long time. It was set up at the request of the minister because the government wanted to securitize certain assets. They found they had a lot of property which then they couldn't securitize.

Then of course securitization earned a bad name in the sub prime market after the collapse of the financial system. So when the crisis of 2008 came, we looked at our legislation to ensure that it could not be abused and that things were okay. At that time we felt the crisis will bring the level of licensed financial services' activities down, which thankfully did not happen in the case of Malta, but at the same time we of course were aware of the industry's stakeholders' interest to keep the financial business going, whether licensed or unlicensed.

When we looked in depth at securitization vehicles and their regulations, there was a particular instrument in Luxembourg which went to London and ultimately ended up here, and there seemed to be confusion in a securitization vehicle, and so we analyzed the vehicle. What went the wrong was that the vehicle kept issuing instruments in their various compartments and then there was contamination between the compartments. So we said, "Well, we have the cell structure, so we let's introduce the **cell structure**."

Now, two important considerations. The first thing is that there are inbuilt in the legislation legal certainties in terms of transfers into the vehicles making sure everything is properly looked into. The second point is that we have not allowed these vehicles, despite a lot of pressure, to issue instruments for retail, so any instrument that is issued is under the prospectus directive, at a very high level.

At that point, before the instrument is issued, the listing authority comes into play. The listing authority obviously then looks at the prospectus for the instrument that's being issued and they ensure that there is complete legal certainty, there is ring fencing of the nature of the securitization



once it has been placed in the securitization vehicle. Now, as everybody knows, the EU was also looking at the whole thing, largely, because securitization earned a bad name. The banks somehow stopped their activities in it. There is liquidity in the market and the ECB is now trying to refine certain issues of securitization to allow more banks to start coming into the market.

Christopher Buttigieg: From a supervisory point view, now that the Single Rulebook is completed, ESMA and the other ESAs are focusing on achieving a higher degree of supervisory convergence and consistency. There are debates at the level of ESMA on the establishment of new mechanisms for this purpose and to allow ESMA to assess the degree of supervisory engagement of national financial supervisors. MFSA has always and will continue to support these initiatives as supervisory convergences and consistency are the tools to address concerns about supervisory arbitrage, which is one of the major causes of mutual distrust between European financial supervisors.

ESMA has published an extensive supervisory convergence Work Programme for 2016, and is now working on a programme for 2017. In future, the one standard across Europe in terms of the regulation that applies to financial markets will be complemented with more linearity in terms of how national financial supervisors conduct supervision. Linearity not only in terms of how we conduct supervision, but also in relation to the level of supervisory engagement, for example the frequency and focus of our on-site inspections and the format and content of supervisory reporting from the industry for off-site supervision. Convergence in the field of enforcement is also being considered. This is the future of financial supervision in Europe and ESMA is clearly doing an excellent job in this regard.

An event which is very much on the minds of European supervisors is the Brexit vote on 23rd June of this year and the possible outcome and consequences of this event, particularly the impact this might have on financial markets, the processes for supervisory convergence and the level of European integration. If UK decides to leave it is expected that there will be disruption and uncertainty in European financial markets. This is unavoidable as London is the largest financial centre in the EU. If the 'Out' campaign wins, the EU would lose one of its important members in terms of financial markets. On other hand this would perhaps be an opportunity for the EU to move faster towards a higher degree of integration. For Malta it would be a great loss as we have a strong relationship with the UK.



Another important area which is being looked into by the ESAs is financial innovation and how this may impact the stability and soundness of the financial system. Consideration is being given to unregulated products and systems and the extent to which the ESAs should intervene in order to address any potential risks to the financial system or to investor protection. This together with the emerging risks and unintended consequences of new regulation, like for example the BRRD and the issue of bail-in bonds by banks. ESMA has considered this in some detail, particularly after recent events in Italy, where many retail investors hold bank bonds. A "bail-in" of small Italian banks in November last year created a lot of uncertainty, particularly as investors were not aware of the bail-in features of these bonds. ESMA has now pronounced itself on disclosure in relation to these type of bonds.

Angele Galea St John

We are continually adopting and embracing evolving regulation with a scope for a broader regulatory perimeter and greater emphasis on better and stronger governance across all financial services sectors. This culture is infused at application stage which makes the process more challenging.

There is also currently a drive from all three European Supervisory Authorities for supervisory convergence which aims for consistent and efficient regulation across all member states. This is positive in itself and starts at ground level with the introduction of the Single Rule Book. Supervisory convergence is about ensuring consistency on how regulation is implemented, supervised and enforced throughout the European market and this is also challenging when we consider that the European Union is made up of 28 different jurisdictions each having its own individual culture.

In this environment, the appropriate regulatory approach and skill set is key. The opportunity – and indeed the challenge – is to give applicants the flexibility to perform their intended functions with the space for growth and innovation - while at the same time ensuring that they respect high quality regulatory standards for the benefit and protection of investors.

Paul Mifsud: As we prepare ourselves for supervisory convergence, common rule books and the neutralization of regulatory arbitrage, one may question whether the quest for innovation has become redundant. Yet no – I believe that there still is scope and room for an edge, one that can offer clarity and surety of interpretation.

Our experience in banking exposes us to several more chapters of the rule books than possibly any other regulated entity. The reason I say this is because it is as a result of this exposure that we often *face issues of conflicting language, spirit and interpretation within the ‘books’ on the same given subject.*

We see this most for example with language used in Tax, AML and in the fund space. CRS and FATCA are good examples of the lack of detail offered as to banks on the treatment of for example client accounts, gaming companies and other financial institutions on whether these are to be treated as FIs or not. We have recently noticed arbitrage at this level between Malta’s interpretation on certain issues versus that of the HMRC.

These difficulties resonate throughout, and since Malta attracts international customers one cannot completely discount interpretations given by other countries. We find this for example present especially in the fund space where subtleties on interpretation arise constantly between service providers.

We notice that despite the effort to harmonize jargon, definitions and spirit, we still witness a serious misalignment between policy makers (governments), Financial Authorities, Tax Authorities, AML directives and ultimately the firm’s own policy.

My point here is, if as a nation we can be quick enough to provide ‘guidance notes’ for all important and sensitive regulation and so to our interpretation of it – i.e “this is how we deal with this in Malta”, I believe we can be quicker in onboarding projects that can otherwise fall by the way side. I guess what I’m trying to say is to compete intelligently by providing speed to interpretation faster than our peers. By offering clarity not only on interpretation but on its implementation, offering services providers and customers clarity to act.



Matthias Knab

I think that’s a great suggestion, Paul. Vincenzo, what are some of the innovations and trends you are seeing as a leading exchange?

Vincenzo Zinnà: You will probably all know our flagship products such as EURO STOXX 50®- , DAX®. ,Bund®.- , Bobl®- Derivatives, and so on. Last year, we started with the BONO-Futures, i.e. Futures on Spanish government bonds. There are a lot of people trading BTP-Futures but wanted to trade the BONO, now they have the futures to trade it. Then for the EURO STOXX 50 ® Index we had demand from London and from the U.S. to have the EURO STOXX 50 ® Quanto in U.S. Dollars. I don’t think that in Malta you use the U.S. Dollar a lot, but with the EURO STOXX 50 ® Quanto Futures you have now the possibility to trade a European market in USD.



Then last year we launched the Mini-Dax® Futures, with a tick size of EUR 5.

With 58 futures and 15 Options on MSCI indexes, we list the majority of benchmarks used by fund managers worldwide. The most successful products are MSCI World and MSCI Europe. We saw a change of interest from the MSCI World in U.S. Dollar to the MSCI World in Euro. The volume increased substantially over the last months, and not only in these three Futures but also in MSCI China Free, MSCI Emerging Markets and MSCI Russia. Not to forget the high volume in the flexible options we offer.

The next new product is ISA Direct. We give the possibility of direct membership to buy side firms at the Clearing House facilitated by a Clearing Agent.

Matthias Knab

So different entities other than banks can become clearing members, can you elaborate more on that?

Vincenzo Zinnà: The Clearing Agent acts as agent to cover the default fund contribution, default management obligation and optional operation and financing functions. ISA Direct member maintains legal and beneficial collateral ownership. This has a lot of benefits, i.e. reduction of capital requirements for banks, improved conditions for the buy side or enhanced segregation and portability, to name only a few.

There is one additional thing I want to show you, let's name it innovation or not. As my clients are pension funds and asset managers I usually show them various hedge possibilities. The put is the most traded hedge, but you all know that with the long put you lose the time decay.

There too is the possibility to short in-the-money calls but why not hedging a portfolio with Volatility Derivatives? Perhaps you know that we have the VSTOXX® Futures which are volatility futures on the EURO STOXX 50®. You surely know the VIX, the volatility of the S&P.

The VSTOXX is traded in contango in 50% of the cases and 50% in backwardation, which means that the front months are higher than the back months. That means that you don't lose rolling cost every time, but you have rolling income too.

The point is to buy the EURO STOXX 50® Index Futures or a portfolio benchmarked to the EURO STOXX 50® and then to buy the VSTOXX® Futures. I thought that this could be an alternative hedge, but at the end the result was much better than my initial expectations.

So to hedge a portfolio, amongst others you have the possibility to sell futures, buy puts, sell in-the-money calls or just buy VSTOXX® Futures.

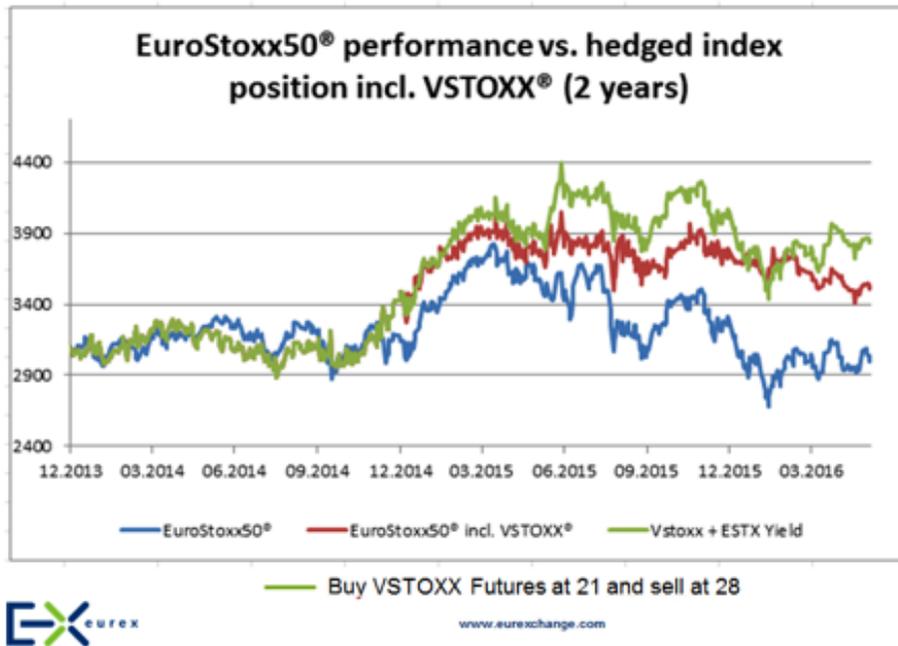
The volume on VSTOXX® Futures started with little size, now we have 50,000 contracts daily average volume, that means that EUR 500 million could be hedged every day.

If you want to hedge EUR 10 million, you have to buy 1,000 Futures. Why that? Because with 10 million, if the market goes down 1%, you lose 100,000.

In the meantime, I assume that the volatility goes up 1%. You know that it is not always like that. The beta changes and it is between -0.7 and -1.1. But to keep it simple I say, if market goes down 1%, volatility goes up 1%. So that means if you have a portfolio of EUR 10 million and it goes down 1%, you lose EUR 100,000. And to regain this EUR 100,000, you have to buy 1,000 Futures, if volatility goes up by 1%. One future has a vega of EUR 100, that means, with one contract you gain EUR 100, if volatility goes up by 1% (i.e. from 20% to 21%).



Hedge: 30th Dec 2013 – 3rd June 2016



Obviously, we don't know if this will be the same in the future. Volatility was high because we had Greece and the 15 January 2015 (Euro decision in Switzerland), I don't know if the performance will be the same in the next years, but I hope so, as we see increasing demand.

Matthias Knab

Volatility is certainly an asset class that's growing, and this is a great example of a relatively simple use that can potentially be very rewarding.

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