



Bank of Valletta

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**BOV/223**

## **COMPANY ANNOUNCEMENT**

The following is a Company Announcement issued by Bank of Valletta p.l.c. pursuant to the Malta Financial Services Authority Listing Rules:

### **Quote**

#### **La Valette Multi Manager Property Fund**

Bank of Valletta (BOV or the Bank) announces that it has received notice (dated 1 June 2012) from the Malta Financial Services Authority (MFSA or the Authority) of its determination with respect to the investigation that it has been carrying out since October 2010 concerning the sales practices adopted by the Bank in connection with the La Valette Multi Manager Property Fund (LVMMPF or the Fund).

This communication closes the last of the three previously announced regulatory investigations relating to the Fund.

The MFSA findings on the sales practices investigation (which are subject to a right of appeal within 30 days thereof) allege breaches of certain Standard Licence Conditions under the Investment Services Guidelines and/or Rules in respect of a number of transactions carried out in connection with the Fund. The Authority has directed the Bank to fully cooperate with a review of files of the investors in the Fund to be carried out by an independent professional services firm, which review is aimed at identifying investors in the Fund that do not fall into the experienced investor category as defined in the LVMMPF prospectus. The most relevant criteria in the approved prospectus was that the investor(s) had, over the previous five year period, carried out investment transactions amounting to at least a sum of or equivalent to US\$50,000 (Lm17,000 at the time). The Authority has stated that those investors identified from the file review as not eligible to invest in the Fund shall be eligible for compensation from the Bank of an amount of €1 per share less any compensation already received.

The MFSA has imposed an administrative penalty of €203,150 on the Bank, and will consider returning an appropriate proportion of the penalty following the conclusion to its satisfaction of the file review referred to above.

The Bank, together with its advisors, is in the course of studying the MFSA communication (which is the product of many months of investigation) in detail, and will be giving careful consideration to its position in terms of the Investment Services Act.

### **Background to the MFSA Investigations relating to LVMMPF**

In late 2010 the MFSA informed BOV that it was carrying out three investigations pertaining to the Fund as follows:

- (i) The extent to which Valletta Fund Management (VFM) and BOV had monitored compliance by the Fund with its investment restrictions, in particular with the leverage restriction referred to as Investment Restriction (v);
- (ii) The sales practices adopted by BOV in selling the Fund, primarily with a view to identifying any evidence of mis-selling of the Fund;
- (iii) The redemptions of units in the Fund in the months prior to suspension of dealings (in August 2008), with a view to identifying any evidence of redemptions on the basis of confidential information to which the general body of investors was not privy.

With its communication of 1 June 2012, the MFSA has now notified the Bank of its findings on all the three investigations listed above. The current position resulting from these investigations is as summarised below.

### **Investment Restriction (v)**

The MFSA's first investigation related to the alleged breach of the gearing restriction referred to as Investment Restriction (v) as set out in the LVMMPF's supplementary prospectus. This investigation was carried out with respect to BOV as well as VFM. MFSA's views concerning this investigation were communicated to VFM and to the Bank by letters dated 15 June 2011, in which the MFSA notified VFM of the imposition of an administrative penalty in the amount of €149,821, and BOV of the imposition of an administrative penalty in the amount of €197,995. In a Company Announcement dated 16 June 2011, both BOV and VFM stated that they remained of the view that the conclusions reached by the MFSA on Investment Restriction (v) were wrong in fact and at law, and, in particular that neither BOV nor VFM failed to act with the required level of care and diligence – and also announced an intention to appeal the MFSA findings.

Prior to the lapse of the 30 day period for the appeal, BOV's offer to investors to fully and finally settle any claim or dispute and to acquire their shares in the Fund (see below) closed on 30 June 2011, with an acceptance rate of 97.9% of the shares in issue as held by 98.0% of investors. On 18 July 2011, BOV issued a Company Announcement in which it stated that in view of the overwhelming acceptance rate to the Offer, BOV and VFM had elected not to proceed with the intended appeals against the conclusions of the MFSA relating to Investment Restriction (v). It was noted that this decision had been taken without prejudice to the views of both BOV and VFM that the MFSA conclusions were wrong and misconceived, both in fact and at law. In particular, BOV and VFM did not accept that their executives carried out their work without due diligence, professionalism and care. The Company Announcement went on to state that this decision not to appeal the MFSA conclusions was taken because BOV and VFM saw little practical merit in an extended adversarial dispute with the MFSA given the 98% response rate to the BOV Offer, and the desire of the parties to bring closure to this matter. Finally and importantly, it was noted that the decision not to appeal was taken without prejudice to BOV and VFM in the event that any of the investors who had not accepted the Offer (or otherwise disposed of their shares) elected to proceed to litigation.

### **The Bank of Valletta Offer**

On 26 May 2011, Bank of Valletta issued an offer to all shareholders in the Fund, whereby it offered to fully and finally settle any claim or dispute and to acquire their shares in the Fund at a consideration of €0.75 per share (the Offer). In the Offer Document BOV explained to investors that whereas it strongly maintained its position on Investment Restriction (v) as supported by international market practice, the BOV Board believed that, if it could be done, a non-contentious resolution was the preferred course of action in the long term interest of all parties concerned. In the light of this consideration, BOV voluntarily made a *bona fide* substantive proposal to all investors – an offer made in good faith, without prejudice and without admission of liability.

In the Offer document of 26 May 2011 and in all subsequent communications, the Bank made it very clear that each and every investor was at liberty to accept or decline the Offer at their own choice – and were at full liberty to decline the Offer and pursue any legal claim or complaint if they so desired – and that the Bank would respect the investors' choice in this regard. It was made equally clear that acceptance of the Offer would be in full and final settlement of any claim or dispute, and would result in the irrevocable transfer of all rights to the Bank. The Bank repeatedly recommended to all investors that they should seek proper advice from independent and competent professionals in connection with the Offer and their position thereunder, and investors were given a period in excess of 30 days in which to do so.

In the event, by the closing date of the Offer on 30 June 2011, investors in the Fund representing 98% of the shares and shareholders had accepted the Offer, and had irrevocably transferred their shares in the Fund, together with all rights attaching thereto, to the Bank. Payments totalling over €44 million were made by BOV to investors during the first week of July 2011 in full and final settlement of their acceptances. The level of acceptances has since increased to 99% as a result of a number of bilateral transactions entered into with various investors subsequent to the close of the Offer on 30 June 2011. As at the date of this communication, a total of 17 investors in the Fund (from an investor roll totalling 2,075) have not accepted the BOV Offer, of which, to date, just 4 have elected to institute judicial proceedings.

On the last day of the Offer, the MFSA issued what purported to be a directive under the Investment Services Act in connection with the BOV Offer, by which “directive” the Bank was asked to ensure that any acceptances of the Offer by investors should be without prejudice to the rights that certain investors may have to compensation or reinstatement. The intention behind this “directive” of the MFSA was unclear to BOV, and the Authority was requested by the Bank to clarify its scope. The MFSA subsequently confirmed that it was not intended that the “directive” should change or modify any contractual relationship entered into between BOV and investors pursuant to the terms and conditions of the Offer. Following further correspondence, the Bank elected to file an appeal against the “directive”; this in full accordance with its legitimate legal rights under legislation governing the actions and powers of the MFSA. This appeal is ongoing and has yet to be determined.

### **The Redemptions Investigations**

Since August 2010, irresponsible allegations had repeatedly been made by certain parties in various newspapers and in judicial protests filed against the Fund and its service-providers to the effect that BOV Group employees or persons connected with the Bank or with the Fund took advantage of privileged information to dispose of their shares in the Fund

prior to its suspension in August 2008. BOV, having carried out its own internal investigation, consistently stated that it firmly believed that the Bank and its staff acted properly and in good faith at all times.

On 21 January 2012, the MFSA issued its report concerning the Redemptions Investigation. The Authority stated that it had undertaken a thorough examination of any information which was identified as being relevant to the investigation, including data on purchases and redemption of shares. The Authority concluded that “its investigation did not reveal any evidence to substantiate the claim that BOV staff or persons connected to them used confidential information as a basis of their decision to redeem their shares from the Fund during the months prior to suspension of redemptions that took place on 8 August 2008.”

Bank of Valletta, having long maintained that it did not believe that any members of the Bank of Valletta Group management, staff or their families had traded in La Valette Multi Manager Property Fund units on the basis of having had access to privileged information, was pleased to note that, after a thorough and detailed investigation undertaken over many months, the MFSA Redemption Investigation report had arrived at the same conclusion.

### **The Sales Process Investigation**

The Sales Process Investigation report issued on 1 June 2012 closes the last of the three regulatory investigations relating to the LVMMPPF, although certain appeal and other processes remain outstanding or under consideration. Although it has not always concurred with the MFSA’s approach and/or its findings, BOV believes that it has at all times used its best efforts to cooperate with the MFSA during the course of its various investigations and enquiries – and readily understands and appreciates the extreme pressures, both at the Bank and at the Authority, that staff concerned have been working under. The Bank will continue to cooperate with the Authority in all respects, including in the carrying out of the file review referred to above.

The Bank also readily acknowledges that there are lessons to be learned from the LVMMPPF experience. In 2011 the Bank commissioned an international financial services consulting firm to carry out a comprehensive independent review of policies, procedures and processes so that these are benchmarked against best-in-class standards in other developed jurisdictions. The recommendations arising from this review are being implemented. It is believed that this initiative has enabled the Bank to learn not just from its own experience, but also from the collective wisdom and experience of many other institutions and regulators arising from the 2008/09 financial crisis.

The Bank will now be giving its careful consideration to the communications received from the MFSA following the conclusion of its Sales Process investigation.

At this time, the Board of Directors does not believe that the FY 2012 financial statements will contain a material charge against profits arising from the La Valette Multi Manager Property Fund matter.

**Unquote**

*Catherine Formosa*

**Dr. Catherine Formosa B.A., LL.D.  
Company Secretary**

4 June 2012