

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

**Securities and Markets
Supervision Unit**

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4 August 2016

To: Investment Services Licence Holders

Attention: The Compliance Officer

Dear Sir/Madam,

Re: Thematic Visits on Best Execution Policies and Procedures

Best execution requires that firms must have arrangements in place to *'take all reasonable steps to obtain, when executing orders, the best possible result for its clients taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order'*¹.

The Securities and Markets Supervision Unit recently carried out a thematic visit at a number of licensed investment services firms so as to assess their implemented Best Execution policies and procedures. The thematic visit consisted of a desk based review of the best execution policies and procedures and also an onsite visit in order to [i] examine the policy in practice; [ii] review a sample of trades recently executed and [iii] determine the extent to which the Best Execution policy and arrangements enable the licence holder to obtain the best possible results for its clients.



¹ SLC 2.54 of Part BI of the Investment Services Rules for Investment Services Providers

The objective of this circular is to inform the industry on the following main findings identified during this thematic review:

[A] Content of the Best Execution (BE) Policy

1. Firms must ensure that they can demonstrate that they monitor the effectiveness of the BE policies and procedures in place on a regular basis

The Authority notes that investment firms do not monitor the effectiveness of the best execution policies and procedures in place. In most cases, no evidence was provided that investment firms review the current BE arrangements through the assessment of transactions on a regular basis.

2. Generic in Nature

In reviewing the contents of the BE Policy, it was noted that in most cases, the policy was generic in nature, quoting the requirements of the MIFID regulation with limited specific details about the investment firm's strategy and key steps required for best execution.

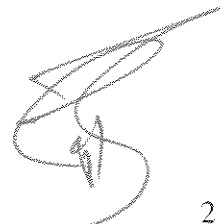
3. Failure to list the venues/entities used for execution

It has come to the Authority's attention that not all the BE policies reviewed included details of the choice of execution venues which are used by the investment firm.

[B] On-Site Visit

1. The use of only one entity for Execution purposes

While there are no restrictions for the Company to deal with one entity for execution purposes, the investment firm must be able to show that this arrangement satisfies the 'overarching' best execution requirement. During the on-site visits, investment firms making use of one execution venue were not in a position to prove to the MFSA officials the effectiveness of this arrangement.



2. Related Parties' Clients Accounts

The Authority requires that Compliance Officers monitor the trades of related party clients on a sample basis in order to ensure that there are no breaches relating to the Best Execution policies and procedures. It is recommended that these sampled checks and any issues which are identified are documented including any action that is taken in this regard.

3. Clients' Identity

As part of the execution process, the trader checks the signature of the client on the Client Order Form with the signature on the client opening documentation. Nonetheless, in certain cases, no evidence of such checks were kept on file.

4. Evidence of Clients' Authorisation

In reviewing the sampled clients' files, the original or scanned copy of the clients' order form was not always on file. Furthermore, it has come to the attention of MFSA officials that in certain instances, manual adjustments have been effected on the clients' order form without proper evidence supporting the authorisation of these changes in the orders received.

Investment firms should ensure that all forms relating to a particular client order are kept on file and are filed in the order in which they are received and/or issued. In addition, for the purpose of traceability, manual adjustments should be initialised and backed up with evidence supporting the rationale of this change.



[C] Other Issues Noted

a) Compliance Monitoring Programme

During the respective on-site inspections, it was noted that a formal Compliance Monitoring Programme and detailed documentation of compliance checks carried out are not always kept by the Compliance Officer.

In view of the Investment Services Rules for Investment Services Providers, including SLC 1.22 of Part BI of the Rules, Compliance Officers are required to follow a formal compliance monitoring programme which details the compliance checks to be carried out within a specific period of time. MFSA Officials expect to be provided with such compliance monitoring programme during on-site visits.

[D] Conclusion

We recommend that Compliance Officers ensure that procedures in line with Part BI of the Investment Services Rules for Investment Services Providers specifically SLC 2.54 to SLC 2.82 are in place within their respective investment firm and that regular monitoring is carried out to ensure that appropriate compliance in relation to Best Execution is maintained at all times.

Should you have any queries regarding the above, please do not hesitate to contact the undersigned or Mr John Sammut, Deputy Director, Securities and Markets Supervision Unit at jrsammut@mfsa.com.mt or Ms Stephanie Buhagiar Camilleri, Analyst, Securities and Markets Supervision Unit at scamilleri@mfsa.com.mt or Mr Luciano Brincat, Analyst, Securities and Markets Supervision Unit at lbrincat@mfsa.com.mt.

Sincerely,



Dr Christopher P. Buttigieg
Director
Securities and Markets Supervision Unit