

Circular: Joint ESMA and EBA Statement on the treatment of retail holdings of debt financial instruments subject to the Bank Recovery and Resolution Directive

Background

In June 2016, MFSA had issued a [circular](#) on ESMA's Statement - *MiFID practices for firms selling financial instruments subject to the BRRD resolution regime*. By way of a follow-up, the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA) are issuing an updated [Statement](#) to examine the treatment of retail holders of debt financial instruments in the context of the Bank Recovery and Resolution Directive (BRRD, Directive 2014/59/EU) and the Markets in Financial Instruments Directive (MiFID II, Directive 2014/65/EU and its implementing measures).

The [Statement](#) notes that the issue of retail holders of debt financial instruments remains significant in view of the fact that retail investors still hold an important part of EU debt securities issued by institutions. In this regard, the [Statement](#) highlights that it is important that retail investors understand the risks inherent in their investments in debt liabilities issued by institutions.

The [Statement](#) cautions that in cases of resolution, particular care should be taken in the implementation of the bail-in due to the fact that retail customers may be holders of the institution's debt liabilities which would be subject to loss sharing as part of the resolution process.

MiFID II updates

On 3 January 2018, MiFID II has entered into application. This Directive includes a number of new provisions aiming to strengthen investor protection. Some of these requirements are particularly relevant to the cases related to retail investors purchasing instruments eligible for bail-in. In order to ensure that products are distributed to clients with whom they are compatible, it is essential that the strengthened investor protection framework be properly implemented by investment firms and enforced by authorities. Particularly relevant are the new MiFID II requirements on (i) product governance; (ii) sale of complex debt instruments; (iii) disclosure; (iv) provision of advice; and (v) assessment of suitability. These issues are all featured in more detail in the [Statement](#).

The [Statement](#) also addresses the manner in which existing MiFID II disclosure requirements should be applied by institutions which have issued and/or are about to issue bail-inable securities to existing investors in order to mitigate the impact on retail investors of an institution's failure.

Target Audience

The content of this circular is addressed to Investment Firms and Credit Institutions when selling bail-in securities.

Contacts

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