

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

CIRCULAR TO THE INDUSTRY ON THE FINANCIAL INSTRUMENT TEST

On 13 April 2018 the MFSA issued a [Consultation Paper on the Financial Instrument Test](#) (Reference No. 04-2018 ('the Consultation Paper')). This Consultation Paper:

- presented an analysis of the definitions of the financial instruments listed under Markets in Financial Instruments Directive ('MiFID')¹ as well as their relevance and implications to DLT assets;
- introduced the methodology underpinning the Financial Instrument Test's determination as well as the considerations which should be taken into account within the context of the EU and national legislative frameworks were also presented;
- outlined the objective, scope and methodology behind the Financial Instrument Test and the respective considerations within the existing framework; and
- discussed the Financial Instrument Test within the context of Virtual Tokens and of those DLT assets falling within scope of current EU and national legislation.

The MFSA received 18 responses to the Consultation Paper from a wide range of industry participants and interested parties including regulated firms, associations, technology providers, law firms and consultancies. Having taken the feedback received into consideration, the MFSA is pleased to announce the publication of the [Financial Instrument Test](#) and a corresponding [Guidance Note to the Financial Instrument Test](#).

The Financial Instrument Test is applicable to [i] issuers offering DLT assets to the public in or from within Malta; and [ii] persons providing any service and/or performing any activity, within the context of either the Virtual Financial Assets Act² or traditional financial services legislation.

The purpose of the Financial Instrument Test is of determining whether a DLT asset qualifies as [i] Electronic Money as defined under the Third Schedule to the Financial Institutions Act³; [ii] a Financial Instrument as defined under the Second Schedule to the Investment Services Act⁴, whether issued in Malta or otherwise; [iii] a Virtual Financial Asset; or [iv] a Virtual Token as defined under the Virtual Financial Assets Act.

¹ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU

² The Virtual Financial Assets Act ('the Act') has been published and can be accessed through www.mfsa.com.mt/vfa. The Act will come into force on such date as the Minister for Digital Economy may establish by notice in the Government Gazette.

³ Chapter 376 of the Laws of Malta

⁴ Chapter 370 of the Laws of Malta

The Guidance Note assists users to compile the Financial Instrument Test by providing clarity and consistency in the determination of the appropriate legislative framework applicable to the DLT asset being assessed and the respective services being offered thereto.

The Financial Instrument Test and the corresponding Guidance Note can be accessed through www.mfsa.com.mt/vfa. Interested parties and prospective users are invited to test the Excel Sheet of the Financial Instrument Test and address any queries and feedback by email on fintech@mfsa.com.mt by not later than **13 August 2018**. The MFSA will consider the feedback received, make any necessary amendments to the Financial Instrument Test Excel Sheet and will proceed to publish the final Excel Sheet following this date.

The MFSA wishes to clarify that the content of the Financial Instrument Test reflects the final position of the Authority and the purpose of this testing phase solely relates to the Excel Sheet of the Financial Instrument Test.

Communications Unit
24th July 2018