

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Circular to Investment Services Licence Holders on the Assessment of Appropriateness and Suitability of Investment Products or Instruments as required by the Investment Services Rules

Background

The Investment Services Rules require Investment Services Licence Holders to assess a client or potential client's knowledge and experience before providing an investment service, other than investment advice and portfolio management, with respect to an investment product or instrument.

When providing investment advice or portfolio management services, Investment Services Licence Holders are to assess the suitability of a particular product or instrument to a client or potential client. This entails assessing the client's knowledge and experience vis-à-vis the product or instrument in question as well as the client's financial background and investment objectives.

Conduct of Business

The Authority considers that it is very important for Licence Holders to ensure that their obligation to act fairly, honestly, professionally and in accordance with the best interests of their client does not conflict with their own commercial interests. With the emergence of more complex products in the market, this obligation assumes greater importance. While clients are expected to take responsibility for any decisions taken by them and for declarations signed by them, Licence Holders are required to ensure that clients are given all the relevant information in non-technical jargon such that clients are in a position to make an informed decision with respect to their investment options.

In assessing appropriateness, the Investment Services Licence Holder should ensure that the client's knowledge with respect to the investment product or instrument under consideration is effectively tested.

To this end, the Authority expects the Licence Holder to elicit sufficient information from the client or potential client in order to be in a position to decide whether the product or instrument is appropriate for the client or potential client. In this regard, the Authority

expects a Licence Holder effecting an appropriateness test or assessing a product or instrument's appropriateness to a client in the context of a suitability test to ensure that:

- a) The client understands the particular features of the product, especially in the case of complex products. This should entail clear answers from specific questions presented to the client about the product features in order to confirm that the client is effectively aware of the features and risks of the product or instrument in question;
- b) The paperwork used for the testing of appropriateness should clearly indicate the service being provided to the client and in the context of which the test is carried out. Where the appropriateness test is carried out in the context of a service other than investment advice and/or portfolio management, the Licence Holder should undertake and declare that in providing these services it has not provided personal recommendations to the client vis-à-vis the product or instrument under consideration. This document should be signed by both the client and the Licence Holder.
- c) In the case of Retail Clients, Licence Holders are expected to provide the documentation used to assess the appropriateness or suitability of a product or instrument also in Maltese if the client so requests.

Contacts

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Communications Unit
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