

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

CIRCULAR ON MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE ('MiFID II') AND MARKETS IN FINANCIAL INSTRUMENTS REGULATION ('MiFIR')

Reporting of Corporate Actions

1. Background

In response to a number of queries received from market participants, the Malta Financial Services Authority ('MFSA') would like to clarify the degree to which the transaction reporting requirements under Article 26 of MiFIR apply to corporate actions. Readers are kindly reminded that this circular should also be read in conjunction with the [Guidelines issued by ESMA](#) on Transaction reporting, order record keeping and clock synchronisation under MiFID II ('the Guidelines') and the [Commission Delegated Regulation 2017/590 \(EU\)](#) ('RTS 22').

This circular particularly intends to provide further clarifications on Article 2(5) of RTS 22 which lists a number of exclusions from the transaction reporting requirements.

In this respect the Authority would like to make reference to paragraph 5.6.2.7 of the Guidelines which states that the exclusion under Article 2(5)(i) of RTS22 does not apply in certain circumstances.

Paragraph 5.6.2.7 of the Guidelines states:

“There is a carve out from the exclusion in 2(5)(i) which states that where the activities in Article 2(5)(i) occur in relation to initial public offerings, secondary public offerings or placings or debt issuance, they should be reported.

The exclusion under 2(5)(i) includes the termination of financial instruments at their maturity on expiry date.

Where acquisitions or disposals take place in connection with mergers, takeovers, insolvency proceedings under Council Regulation (EC) 1346/2000, stock splits or reverse stock splits, these are not reportable. In these situations, the conditions are usually set in advance at the shareholders meeting, are displayed through a relevant information announcement, and investors are subject to this agreement without the investor making any further decisions.”

For ease of reference, Article 2(5)(i) of RTS 22 stipulates that, *“the creation, expiration or redemption of a financial instrument as a result of pre-determined contractual terms, or as a result of mandatory events which are beyond the control of the investor where no investment decision by the investor takes place at the point in time of the creation, expiration or redemption of the financial instrument does not fall under the reporting obligation contained in Article 26 of MiFIR.”*

2. Changes in Share Capital (Redenomination, Bonus Shares, or Share Splits)

Paragraph 5.6.2.7 of the Guidelines also states that *automatic increases or decreases of notional stemming from amortization schedules are also not reportable since the conditions have been already set at the point in time of the initial contract with no decision being made at the time of decrease/increase of notional.*

Accordingly, changes in share capital through for instance, allotment of shares (bonus share), share splits, redenomination of shares and so on, would not be reportable under Article 26 of MiFIR if the conditions have been already set at the point in time of the initial contract, with no decision being made by the investor.

3. Scrip Dividends

According to the Guidelines, *the issuance of scrip dividends are not reportable subject to the carve out above as this involves the creation of financial instruments as a result of pre-determined contractual terms where no investment decision is made by the investor at the time of the instruments' creation...*

... However, events where the investor makes a decision at the point in time of creation, expiration or redemption are reportable. These events include where the client is electing to receive cash or instruments in a takeover bid or where an issuer has a choice whether to deliver in cash or in financial instruments."

Therefore, the determination of whether scrip dividends are reportable in terms of Article 26 of MiFIR depends on whether the investor has made an investment decision or otherwise. More specifically, if an issuer through a scrip dividend automatically provides additional shares to existing shareholders in proportion to the shares which they already hold (i.e. issuance of shares instead of a cash dividend), then such a scrip dividend does not appear to require a transaction report in terms of Article 26 of MiFIR.

However this position alters if the issuer opts to provide a choice to existing shareholders between the delivery of a cash dividend versus the delivery of shares. In such a case, if existing shareholders opt to receive shares rather than cash dividends, such transactions are required to be reported in terms of Article 26 of MiFIR.

4. Rights Issues

According to Article 2(5)(h) of RTS 22 *the exercise of a right embedded in a financial instrument, or the conversion of a convertible bond and the resultant transaction in the underlying financial instrument is not subject to transaction reporting.*

Paragraph 5.6.2.6 of the Guidelines state the following:-

Exercising a financial instrument such as an option, a covered warrant, a convertible or exchangeable bond, an allotment right or a subscription right by the owner of the financial instrument does not trigger transaction reporting obligations for the Investment Firm exercising the option or the Investment Firm being exercised against. Where the exercise results in the delivery of another financial instrument this is also not reportable by either the Investment Firm exercising the option or by the Investment Firm being exercised/assigned against.”

In this respect, the Authority would like to clarify that where a shareholder takes up a rights issue (either in full or partially) and pays the issuer the respective price in exchange for the additional shares (which shares have the same features as the existing shares already held by the shareholder), such instance would not give rise to the reporting obligation and falls under the exemption contained in Article 2(5)(h) of RTS 22. If the shareholder chooses not to take up the rights issue, then if the rights lapse there would be no transaction hence no reporting obligation. Lapsed rights are considered to be within the exclusion in Article 2(5)(h) of RTS 22.

If upon a rights issue, the shareholders choose to transfer their rights (either in full or in part) to a third party, the Authority understands that in this case, there is an investment decision by the shareholder who would have decided to sell the rights at a certain moment and at a certain price. Accordingly, such transaction is expected to be reported in accordance with Article 26 of MiFIR.

Similarly, taking up the rights issue and opting to take additional shares which were not taken up by other shareholders (paying the issuer for the additional shares) would also trigger the reporting obligation in view of the fact that there is an investment decision on the part of the shareholder.

5. Conclusion

For further clarification in relation to the reporting of corporate actions, please refer to the [Q&As](#) issued by ESMA on MiFIR Data Reporting.

Should you have any queries on the above, please contact the Authority on:
TransactionReporting@mfsa.com.mt

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