

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Circular addressed to Investment Firms and Market Operators regarding MiFID II and MiFIR

On 14th January 2014 by the European Parliament and the Council reached an agreement on the updated rules for markets in financial instruments (MiFID II/MiFIR). The agreement on the legislative texts represents a critical milestone of the review that has been over two years in development since the Commission's proposals were first published.

Background

The new rules will be set as two pieces of legislation: [i] a directly applicable regulation (MiFIR) dealing inter alia with transparency and access to trading venues and [ii] a directive (MiFID II) governing authorisation and organisation of trading venues and investor protection.

[i] The Directive (MiFID II) amends specific requirements regarding the provision of investment services, the scope of exemptions from the current Directive (MiFID I), requirements for investment firms on their organisation and the conduct of their business, organisational requirements for trading venues, powers available to competent authorities, sanctions and rules applicable for third party firms.

[ii] The Regulation (MiFIR) sets out requirements in relation to the disclosure of trade transparency data to the public and transaction data to competent authorities, the authorisation and ongoing obligations applicable to providers of data services, the mandatory trading of derivatives on organised venues, and specific supervisory actions regarding financial instruments and positions in derivatives.

Applicability

The new rules will apply to investment firms; market operators and services providing post-trade transparency information in the EU.

Key elements of the agreement

The key elements of the agreement are as follows:

1. The introduction of a market structure framework – the objective of which is to ensure trading (whenever appropriate) takes place on a regulated platform;
2. The increase in equity market transparency and the establishment of the transparency principle for non-equity instruments such as bonds and derivatives;
3. Harmonised position-limits regime for commodity derivatives with the objective to improve transparency;
4. Implementation of a new framework which will improve conditions for competition in the trading and clearing of financial instruments as well as the introduction of trading controls for algorithmic trading activities;
5. Stronger investor protection by means of the following measures: the introduction of better organisational requirements; strengthened conduct rules; the distinction between independent and non-independent advice; and harmonised powers and conditions for ESMA to prohibit or restrict the marketing and distribution of certain financial instruments;
6. Strengthening the existing regime in order to ensure effective and harmonised administrative sanctions;
7. Harmonised regime for granting access to EU markets for firms from third countries based on an equivalence assessment of third country jurisdictions by the Commission.

The MFSA will keep the industry updated on any further developments.

Contacts

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