

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Circular to the financial services industry on the application of the definitions in Sections C6 and C7 of Annex I of the Directive 2004/39/EC ('MiFID I')

Background

On the 6th May, 2015 the European Securities and Markets Authority ('ESMA') issued guidelines on the application of the definition of commodity derivatives and their classification under C6 and C7 listed in Section C of Annex I of MiFID I ([ESMA/2015/675](#)).

The application of MiFID I in the different Member States has given rise, for certain types of instruments or contracts, to different interpretations among Competent Authorities on what should constitute a financial instrument and what should be classified as a derivative contract. These different interpretations may lead to an inconsistent application of MiFID I, the European Markets Infrastructure Regulation ('EMIR') and potentially other Directives and Regulations that rely on MiFID I definitions of financial instruments. Being a Regulation, EMIR is intended to be directly applicable across all Member States and thus cannot be applied differently as a result of different national interpretations of definitions included in a Directive.

The purpose of these guidelines is to ensure a common, uniform and consistent application of the definitions of commodity derivatives under C6 and C7 of Annex I of MiFID I.

Application of Guidelines

These guidelines provide a clarification on whether forward derivative contracts are included under C6 of Annex I of MiFID I, and offer an explanation on the meaning of "physically settled", a term used under both C6 and C7 of the said annex.

Competent Authorities were requested to provide ESMA with their feedback on whether they intend to comply with the said guidelines or otherwise. In this regard, the Authority would like to inform market participants that it shall comply with the aforementioned guidelines as at the date of this circular.

Contacts

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Communications Unit

Malta Financial Services Authority

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