

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Circular on Revisions made to the Conduct of Business Rulebook

Reference is made to the Conduct of Business Rulebook ('Rulebook') issued by the Malta Financial Services Authority ('the Authority') on 20th December 2017.

The Authority is hereby publishing an updated version of the Rulebook which can be found on the Authority's website and accessed [here](#). The main updates made to the Rulebook are provided hereunder.

[i] Rulebook as Applicable to the Insurance Sector

Further to the implementation of the Directive (EU) 2016/97 ('Insurance Distribution Directive'), the Rulebook will apply to insurance undertakings and insurance intermediaries as from 1st October 2018. Industry participants are encouraged to contact the Conduct Supervisory Unit with any difficulties they may encounter in implementing the requirements. The Conduct Supervisory Unit will be reviewing such queries and will provide a 'Frequently Asked Questions' document to address the most common queries raised.

Pursuant to the feedback received from the insurance sector, as part of the consultation process, the Authority would like to inform industry participants that the draft Rules relating to insurance undertakings and intermediaries published on 20th December 2017, have been revised as follows:

Disclosures to be made Before Certain Insurance Contracts are Concluded

In relation to the distribution of non-life insurance products, insurance undertakings and insurance intermediaries are required to provide a standardised product information document which can be provided in either English or Maltese or in another language agreed to by the client and the distributor. The Authority has reconsidered its position and Rule 1.4.101 has been amended to the effect that notwithstanding the requirements of R.1.1.2 and R.1.4.16 (b), the product information document may be provided in English.

Inducement Requirements

Rules relating to inducements provided in Chapter 3 of the Rulebook which apply to insurance undertakings and intermediaries were separated from those applying to investment firms so as to ensure that insurance undertakings and insurance intermediaries are subject to the requirements of the Insurance Distribution Directive and relevant implementing Regulation.

[iii] Amendments to the Rulebook Applicable to the Securities Sector

Following additional feedback received following the issue of the Rulebook on 20th December 2017, the Authority has made a number of amendments, as indicated further below, taking into consideration the feedback received from industry participants. In order to assist the industry, the Authority is also issuing a ‘Frequently Asked Questions’ document which is available on the Authority’s website and can be accessed [here](#).

Requirement to Provide a Suitability Statement.

Rule 4.4.36 requires investment firms to provide clients with a suitability report when providing both investment advice and portfolio management services.

In this regard, the Authority has considered that it has interpreted the MIFID II requirements too restrictively and has now reconsidered its position such that a suitability statement is only required when advisory services (not portfolio management services) are provided.

Accordingly, Rule 4.4.36 has been amended to reflect the above.

Reporting of Information on the Top Five Execution Venues and Quality of Execution Obtained

Rule 1.3.14 requires an investment firm who executes client orders to make public on an annual basis, for each class of financial instruments, the top five execution venues in terms of trading volumes where such investment firm has executed client orders in the preceding year and information on the quality of the execution obtained.

This Rule has been amended to the effect that investment firms should refer to the requirements of Commission Delegated Regulation (EU) 2017/576 for guidance on the content, format and the manner in which the information should be published.

Reporting Obligations in respect of Execution of Orders other than for Portfolio Management

Rule 1.4.45 requires investment firms who have carried out a subscription or redemption order from a unit holder, to notify the client, by means of a durable medium, confirming execution of order within the timeframes provided in the same Rule.

Kindly note that for clarity purposes, Rule 1.4.45 has been amended to indicate more clearly the reporting obligations in respect of execution of orders to investment firms who have carried out a subscription or redemption order from a unit-holder with respect to UCITs.

Reporting Requirements Applicable to Regulated Persons

Rule 4.1.11 provides details in relation to the procedures Regulated Persons are expected to abide by when providing a product or service to a client including the contents of a contract note, invoice or receipt. This Rule applies to all Regulated Persons, however the Authority has amended the Rule to apply to insurance undertakings and insurance intermediaries. Therefore,

investments firms and credit institutions that are subject to MIFID II requirements are no longer required to abide by such Rule.

Accordingly, Rule 4.1.11 has been inserted as Rule 4.1.40 which can be found in Part D of Section 1 of Chapter 4.

[iii] Additional Amendments Made to the Rulebook Applicable to all Regulated Persons

Inclusion of Regulatory Disclosure Requirement in Advertisements

The Authority noted that the requirement of Rule 1.2.13 is not consistent with the guidance provided in relation to those circumstances where the regulatory disclosure statement is not required. The regulatory disclosure statement required in terms of Rule 1.2.13 for advertisements issued by Regulated Persons does not apply where the advert approved, disseminated or information provided consists of only one or more of the following:

- (i) the name of the Regulated Person;
- (ii) a logo or other image associated with the Regulated Person;
- (iii) a contact point;
- (iv) a reference to the services provided by the Regulated Person;
- (v) reference to the fees or commissions charged by the Regulated Person.

Therefore, Rule 1.2.13 has been amended to the effect to amend the inconsistency and to clarify further this position.

Issuing and Approval of Advertisements

Rule 1.2.10 provides that where a Regulated Person appoints tied insurance intermediaries or tied agents, the Regulated Person shall approve all advertisements relating to the business carried on by such Regulated Person and which are issued by such tied insurance intermediaries or tied agents.

The Authority has inserted a guidance note to Rule 1.2.10 explaining that, whilst retaining responsibility for compliance with applicable legal and regulatory requirements for all advertisements that are issued by the indicated intermediaries, Regulated Persons may consider issuing specific requirements to be adhered by their tied insurance intermediaries or tied agents when these issue advertisements on social media. The Regulated Person may decide to indicate that advertisements issued by such intermediaries abiding by the requirements issued for such purpose would also carry its deemed approval. However, the Regulated Person is required to carry out ex-post monitoring of the advertisements issued by such intermediaries.

Personal Visits and Contact with Clients

In its Feedback Statement, the Authority provided that Regulated Persons will not be allowed to cold call potential clients with a view of setting up appointments for home visits to sell products or provide services. The Authority would like to clarify its position that rather than not being permitted, Regulated Persons should as much as possible avoid making unsolicited

or unarranged calls unless otherwise requested by a client. In this respect, Rule 4.1.15 has been amended to clarify this position.

Contacts

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