

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Circular regarding the EU Markets in Financial Instruments Directive ('MiFID') and the EU Capital Requirements Directive ('CRD')

31st January 2007

1.0 Background/Introduction

Since 2004, MFSA has been working on the required changes to the local legal and regulatory framework in order to transpose/implement the CRD and the MiFID. In this regard, four consultation documents were issued on:

13th November 2006: 1st MiFID consultation document outlining the proposed amendments to the Investment Services Guidelines [to be renamed 'Investment Services Rules'] in order to transpose part of the MiFID Framework Directive and the Commission Implementing Directive;

6th December 2006: 1st CRD consultation document outlining the proposed amendments to the Investment Services Guidelines in order to transpose the CRD;

27th December 2006: 2nd MiFID consultation document outlining the proposed amendments to the Investment Services Guidelines in order to transpose the MiFID transaction reporting provisions;

10th January 2007: 2nd CRD consultation document providing the industry with a specimen of the CRD Automated Financial Return.

The purpose of this circular is to serve as: [i] an explanatory note regarding (a) the changes to the Investment Services Guidelines, the up-dated version of which is being published and brought in to force immediately; and (b) the New DRAFT Investment Services Rules which will eventually replace the Investment Services Guidelines; and [ii] a consultation document on the promotion and selling requirements and the post-trade transparency requirements which will be applicable to investment services licence holders in terms of the New Rules. Such requirements are being included as part of the DRAFT Rules referred to in [i](b) above.

2.0 Explanatory Note

Having considered the feedback provided by the industry to the above-mentioned consultation documents, the MFSA has made further amendments to its drafts and has today:

[i] adopted and published a revised version of the Investment Services Guidelines duly updated to incorporate the requirements of the CRD. This will replace the current version of the Investment Services Guidelines and is immediately enforceable; and

[ii] published an up-dated draft of Part C I of the Investment Services Rules and Appendices I, II and X which together have the purpose of transposing parts of the MiFID and the CRD. These Rules are scheduled to be brought into force on the 1st November 2007, by which date the industry is expected to have its systems, policies and procedures in line with the provisions of the said New Rules.

[2.1] The Investment Services Guidelines:

The main changes to the Investment Services Guidelines are found in:

[i] Section 8.10 of Part A and Section 10 of Part C I;

[ii] A new Appendix I entitled “Financial Resources and Guidance on the Compilation of the Financial Return” which will replace the current Appendix I entitled “Guidance for Automated Interim and Annual Financial Returns”.

[2.1.1] Changes to Section 8.10 of Part A and to Section 10 of Part C I

Section 8.10 of Part A of the Investment Services Guidelines has been revised in line with the new Financial Resources Requirement for Category 1(a), 1(b), 2, 3 and 4 Licence Holders.

The main changes to Section 10 of Part C I of the Investment Services Guidelines relate to the new requirement of Licence Holders to maintain, at all times, own funds which are equal to or in excess of their financial resources requirement. The latter will vary depending on the category of the Licence Holder and is spelt out in the new Appendix I to the Investment Services Guidelines. Thus, all references to the ‘Liquid Capital Requirement’ have been removed from Section 10 since this requirement is no longer applicable.

[2.1.2] The New Appendix I of the Investment Services Guidelines.

Appendix I of the Investment Services Guidelines, which contains the main provisions that transpose the CRD, has been revised considerably. The new Appendix I:

[i] details the new financial resources requirements;

[ii] distinguishes between and explains the meaning of trading and non-trading book business;

[iii] defines the various elements which make up the calculation of the Own Funds, each of the risk components, and the fixed overheads requirement; and

[iv] explains the manner in which the automated financial return which Licence Holders are required to submit to the Malta Financial Services Authority in terms of the Investment Services Guidelines, should be completed.

For further details regarding the main differences between the requirements set out in the current Appendix I and those provided for in the new Appendix, please refer to our circular of the 6th December 2006 entitled “Circular regarding the EU Capital Requirements Directive”.

[2.1.3] Applicability.

As explained in Section 1 of this note, these revisions to the Investment Services Guidelines are applicable as from today and are scheduled to remain applicable until the 1st November 2007 - the date on which the New Rules are scheduled to come into force.

[2.2] Investment Services Rules

As advised in our circular of the 13th November 2006 entitled “Circular regarding the EU Markets in Financial Instruments Directive”, the term “Guidelines” shall be replaced by “Rules” in order to better reflect the nature of the requirements contained therein.

These New Rules have been subject to the consultation process mentioned in the introductory section to this circular. For details on the main differences between the requirements set out in the current Guidelines and those provided for in the new Rules, please refer to the consultation documents referred to in the introductory section to this circular. In this regard reference should also be made to the MFSA’s Feedback Statement dated 25th January 2007 [hereinafter referred to as the MiFID Feedback Statement]..

3.0 New SLCs Relating to Promotion and Selling of Investment Products and Post-Trade Transparency

MFSA would like to draw the attention of Licence Holders to the new proposed SLCs 2.118 to 2.122 and 6.13 of Part C I of the Draft Rules which SLCs have been drafted: [i] to clarify the requirements to apply to the practice of promotion and selling of investment products by Licence Holders as stated in point [2.1] of the MiFID Feedback Statement; and [ii] to transpose the MiFID post-trade transparency requirements applicable to Investment Services Licence Holders.

These SLCs were not included in the version of the Draft Rules issued for consultation on the 13th November and the 27th December 2006 and are hereby being proposed to Licence Holders for the first time. Accordingly, MFSA will welcome any comments and/or suggestions with respect to SLCs 2.118 to 2.122 and 6.13 by the 16th February 2007.

[3.1] Applicability

The Investment Services Rules which transpose the requirements of the MiFID and its Implementing Directive presuppose amendments to the Investment Services Act, the Financial Markets Act and the relative Legal Notices. It is anticipated that such changes will be effected in the coming months. .

Licence Holders are *strongly* encouraged to familiarise themselves with the requirements of the new Rules and to update their systems, policies and procedures as necessary in order to ensure compliance by the 1st November 2007. As already indicated in the MiFID Feedback Statement, MFSA will be organising a number of seminars on the new requirements, during which Licence Holders will have the opportunity to raise any questions which they may have in this regard. Relevant details will be communicated in due course.

Contacts

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