

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

**Feedback statement issued further to Industry responses to MFSA
Consultation on the Proposed Changes to Part A and Part BI of the
Investment Services Rules for Investment Services Providers**

MFSA Ref: 03-2017

9 June 2017

Introduction

On the 16 March 2017, the Malta Financial Services Authority ('MFSA' or 'the Authority') issued a Consultation with the financial services industry with regards to the proposed changes to Part A and Part BI of the Investment Services Rules for Investment Services Providers ('the Rules'). The Authority sought the financial industry's comments and suggestions with regards to the proposed drafts to replace Part A and Part BI of the Rules. The Consultation period closed on the 17 April 2017.

Feedback Statement

Further to the consultation documents, the MFSA is now issuing a feedback statement on the comments received in relation to the drafts circulated. An outline of the main comments received and the MFSA's position in relation thereto is provided below.

1) Introducing Brokers

Industry Comment: Participants queried [i] the distinction between an introducing broker and a money manager; and [ii] whether Introducing Brokers require a licence.

MFSA Position: An introducing broker limits its activities to mere introductions whilst we understand that money managers do more than just introduce by effectively trading using client funds whilst charging commissions to generate income. Article 5 of MiFID *inter alia* states that "*the performance of investment services or activities as a regular occupation or business on a professional basis be subject to prior authorisation...*" In this light, the provision of investment services and/or the performance of investment activities is subject to prior authorisation. Investment services and activities are listed in section A of Annex I of MiFID.

2) Credit Institutions

Industry Comment: An industry participant queried whether as a result of the proposed R1-1.1.2, which states: "*Provided that a Licence Holder which is a credit institution licensed in terms of the Banking Act..... is not subject to these rules except for rule R3-5.4.2.13, rule R4-5.3.2 and Sections 2 and 3 of Title 1 of Chapter 4*", a credit institution licenced in terms of the Banking Act would only be subject to the Rules specifically referred to in terms of this ISR.

MFSA Position: With respect to the applicability of the Rules to licence holders which are credit institutions in terms of the Banking Act, it is the Authority's intention is to maintain the status quo. In this light, there is clearly a drafting error in R1-1.1.2. In this regard, the below wording is being proposed instead of R1-1.1.2.

"R1-1.1.2 *Provided that a Licence Holder which is a credit institution licenced in terms of the Banking Act, 1994 or a branch established in Malta of a credit institution*

authorised in an EU Member State or EEA State, or of an overseas credit institution which is subject to prudential requirements at least equivalent to the requirements applicable to Maltese credit institutions, is subject to these Rules in their entirety, with the exception of:

- 1. Point 77 of RI-1.3.1;*
- 2. Chapter 2 – Prudential regulations;*
- 3. Section 3, Title 2 of Chapter 3 on Risk Management and the Internal Capital Adequacy Assessment Process; and*
- 4. Title 7 of Chapter 4 on Disclosure requirements.”*

Comments

Any comments with respect to the above can be sent by e-mail on ISRConsultation@mfsa.com.mt.

**Communications Unit
Malta Financial Services Authority
9 June 2017
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