

22 July 2019

## Conduct of Business Rulebook Revisions

Reference is made to the Conduct of Business Rulebook ('Rulebook') originally issued by the Malta Financial Services Authority ('the Authority') on 20th December 2017. The Authority is hereby publishing an updated version of the Rulebook including specific requirements in the sectorial parts to faithfully reflect the applicable requirements emanating from the respective EU Directives. A copy of the revised Rulebook can be found on the Authority's website and accessed [here](#).

The changes, effective from the 11<sup>th</sup> of July 2019 carried out to the Rulebook are the following:

### **ii) Requirements Applicable to the Securities Sector**

#### ESMA's Renewal of its Prohibition on the Marketing, Distribution or Sale of Binary Options

On 13<sup>th</sup> May 2019, the Authority issued a [Consultation](#) document relating to the product intervention measures the Authority proposed to implement in relation to binary options in terms of Article 42(2) of Markets in Financial Instruments Regulation. The measures have been included in Part C, Section 1 of Chapter 4 of the Rulebook (on Sales and Selling Practices). A definition of 'Binary Option' has also been included in the Glossary. These measures shall be applicable as from 11<sup>th</sup> July 2019.

#### Shareholder Rights Directive II

Following the Consultation documents issued by the Authority regarding the encouragement of long-term shareholder engagement, new disclosure requirements have been included in the Rulebook in order to transpose certain requirements emanating from Directive (EU) 2017/828 (Shareholder Rights Directive II). Regulated Persons providing services to shareholders or other intermediaries, in relation to shares that are admitted to trading on a Regulated Market, are required to refer to the requirements included in Part H, Section 4 of Chapter 1.

#### Definition of Regulated Person

Pursuant to the [Circular](#) which was issued by the Authority in relation to the Regulatory Framework for 'CRR Local Firms' within the Maltese MiFID Investment Firms' Framework, point (i) of the definition of Regulated Person, as provided in the Glossary to the Rulebook, has been amended in order to exclude CRR Local Firms from the applicability of the Rulebook. A definition of 'CRR Local Firm' has been added to the Glossary.

### **[iii] Requirements Applicable to Insurance Undertakings and/or Intermediaries**

#### Conflicts of Interest Requirements

Following further consideration, the Authority has decided to amend the requirements of Rule 3.10 insofar as the insurance industry is concerned. Whereas Regulated Persons were previously required to take appropriate steps to identify and to prevent or manage conflicts of interests, the requirement has been amended to the effect that Insurance undertakings and Insurance intermediaries are required to take all appropriate steps to identify and manage conflicts of interest between themselves, including their managers, employees, tied insurance intermediaries, ancillary insurance intermediaries or any person directly or indirectly linked to them by control. Kindly note that this amendment has been inserted as Rule 3.92 under Part E of Chapter 3 of the Rulebook.

### **[iiii] Requirements Applicable to All Regulated Persons**

#### Marketing Rules

Rule 1.2.22 requires Regulated Persons to ensure that any advertisement or information aimed at an identified target market includes reference to such identified target market. The requirement of this Rule has been amended to clarify that it shall apply to investments firms in relation to new product/s offered to clients as from 3<sup>rd</sup> January 2018 and to insurance undertakings and insurance intermediaries with respect to product/s offered to clients as from 1<sup>st</sup> October 2018.

#### Provision of Information

In relation to the guidance note referring to the general requirement of Rule 1.4.11 (in the previous version) requiring Regulated Persons to provide a summary cover, the guidance note has been amended to clarify that in the case of Insurance Undertakings and Intermediaries they are required to provide either the KID or IPID.

#### Requirement Applicable when Regulated Persons act as Manufacturers and/or Distributors

In order to faithfully reflect the requirements of the Insurance Distribution Directive, the general requirement of Rule 2.15 has been amended to require the Regulated Persons to carry out regular reviews of the products they offer or market when they act only in the capacity of the 'Manufacturer'.

#### Telephone Contact with Clients

Regulated Persons are permitted to make telephone contact with existing clients only if they satisfy the criteria provided in Rule 4.1.20. However, for the purposes of the third criteria which requires the client to give his or her consent to being contacted telephonically, the Regulated Person may proceed by requesting the client his or her verbal consent at the beginning of the telephone conversation. The Regulated Person is required to retain a record of the client's verbal consent.

Record Keeping Requirements

Rule 4.1.24 (in the previous version) which requires Regulated Persons to record in a durable medium, written minutes or notes all relevant information gathered from face-to-face conversations with clients. The Authority has further reconsidered its position with respect to this Rule to the effect that face-to-face conversations may be recorded by means which are technologically permissible. Moreover, Rule 5.44 has also been amended in line with this approach.

**[iv] Other Amendments made to the Rulebook**

- Definition of ‘Regulated Market’ has been included in the Glossary;
- The requirements of the previous Rule 3.10 applicable to investment firms can now be found in R.3.20;
- Paragraph (e) of G.1.2.2 has been amended in order to bring the requirements in line with MIFID II;
- the requirement of G.2.25 (in the previous version) has been deleted since the requirements are covered in Section 6 of Chapter 1;
- R.5.44 has been amended in line with the amended R.4.1.24.

**Summary of Amendments**

The below table summarises the amendments made:

Definitions/Glossary Section	Definitions of ‘CRR Local Firms’ ‘Regulated Market’, ‘Large Risks’, ‘Binary Options’ were added in the Definitions/Glossary section.
Section 2, Chapter 1	Rule 1.2.22 amended to clarify that the requirement shall apply to investments firms in relation to new product/s offered to clients as from 3rd January 2018 and to insurance undertakings and insurance intermediaries with respect to product/s offered to clients as from 1st October 2018.  Paragraph (e) of G.1.2.2 has been deleted.
Section 4, Chapter 1	G.1.4.1 has been amended to the effect that with respect to insurance undertakings and intermediaries they are required to provide a KID or IPID.
Part H, Section 4, Chapter 1	Rules added implementing the requirements of the Shareholder Rights Directive (II).
Part A, Chapter 2	Rule 2.15 has been amended to require Regulated Person when acting as ‘Manufacturer’ to carry out regular reviews of the products it offers or markets.  G.2.25 has been deleted since requirements are covered in Section 6 of Chapter 1.

Part A, Chapter 3	The previous Rule 3.10 (in the previous version) has been amended in order to separate the requirements applicable to investment firms (now found in R.3.20) and insurance undertakings and intermediaries (now found in R.3.92). Furthermore, the insurance undertakings and intermediaries are now required to identify and manage conflicts of interests.
Part, A Section 1, Chapter 4	Rule 4.1.20 has been amended to provide that for the purposes of obtaining the client's verbal consent to be contacted by the Regulated Person telephonically, the Regulated Person may proceed by requesting the client his/her verbal consent at the beginning of the conversation. However, the Regulated Person is required to keep a record of such client's verbal consent.  Rule 4.1.23 has been amended removing reference to 'minutes or notes'.
Part C, Section 1, Chapter 4	Rules 4.1.40 and 4.1.41 were added in line with the Consultation document issued by the Authority on 13 <sup>th</sup> May 2019.
Part C, Chapter 5	Rule 5.44 has been amended in with the requirement of Rule 4.1.24.

## Contacts

Any queries or requests for clarifications on the contents of this Circular should be addressed to Conduct Supervision on [financialpromotion@mfsa.com.mt](mailto:financialpromotion@mfsa.com.mt).