

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

RULES ON FOREIGN CURRENCY LENDING

Feedback Statement

December 2012

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Introduction

On 29th October 2012, the MFSA issued a consultation document entitled: “**Proposals for Foreign Currency Lending Rules**”. The consultation period ran till 14th November 2012.

The Authority received comments from two respondents. The feedback received was positive and all respondents agreed with the main proposals and recommendations made in the Consultation Document save with some considerations. The respondents expressed recognition of the particular risks associated with foreign currency lending and accordingly gave their full support.

A summary of the main comments received in conjunction with the Consultation Document on the proposed new Rule on Foreign Currency Lending and accompanying reporting templates is being provided hereunder. The Authority’s position has been determined after a careful and thorough consideration of the feedback received. Changes to the Rules made as a consequence of the feedback received are reflected in a marked-up draft attached to this Feedback Statement as Appendix 1. This version also contains certain improvements to drafting made after the conclusion of the Consultation Process.

This Feedback statement is written in the form of Q&A and every comment received is accompanied by a statement of the Authority. The comments are based on the numbering of the MFSA Rule as circulated originally. Any alterations in the numbering resulting from the consultation process will be reflected in the updated draft. The new numbering is also reflected in the tracked version of the Rules attached to this Statement.

An updated draft of the new Foreign Currency Lending Rule and its two accompanying reporting templates are being circulated with this Feedback Statement. Feedback was also received as to the contents of the reporting templates which form part of the Rules and a separate Q&A shall be issued in that respect.

Comments received on the Rule on Foreign Currency Lending

1. Paragraph 7 of the Foreign Currency Lending Rule - Definitions

7. Foreign currency: shall mean any currency other than the legal tender of the Member State in which the borrower is domiciled;

Respondent's Comments: A Respondent suggested replacing the term 'Member State' with 'country' as the borrower may be domiciled in a country outside the EU.

Authority's Comments: In this respect, the Authority notes that the definition was provided in the ESRB Recommendations. However, after considering the objectives of the Recommendation on page 342/8 of the Report annexed thereto, as well as the definition of foreign currency provided therein the Authority has decided to replace the term 'Member State' with 'country' and extend the remit of the MFSA Rules beyond that of the ESRB Recommendations.

Respondent's Comments: A Respondent commented on the fact that while foreign currency is defined in terms of the domicile of the borrower, paragraph 23 of Principle 3 refers to the term 'residence'. It was suggested to use one term consistently and define it. The definition of 'residence' included in these Rules is that same as that used in the Banking Rules currently in force (ref. BR/06 appendix 2, pt 16)

Authority's Comments: In view of the comments received, the MFSA has decided to use the term 'residence' and define it in the definition section.

2. Paragraphs 40 and 41 of the Foreign Currency Lending Rule - Submission to the Authority

40. Financial institutions undertaking any lending activities in foreign currency shall fill in the template specified in Annex A and submit it to the Authority within one month from the end of each quarter.

41. In addition to the template mentioned in the preceding paragraph, MFIs and financial institutions referred to in paragraph 31, shall fill in the template specified in Annex B and submit it to the Authority within one month from the end of each quarter.

Respondent's Comments: It was noted that the principle of 'materiality' was not included in the proposed Rules, unless this falls within paragraph 10 to the effect that foreign currency lending of any size will trigger new reporting requirements.

A respondent suggested that paragraphs 40 and 41 should be merged together. The following new drafting was suggested to paragraph 40 with the consequential deletion of paragraph 41:

"Financial institutions identified by the Authority as undertaking material lending activities in foreign currency shall fill in the templates specified in Annexes A and B and submit them to the Authority on a quarterly basis, or as may be specified by the Authority. The templates should be submitted within one month from the end of each reporting period."

Authority's Comments: In view of the comments received, the Authority has decided to implement the suggested changes to paragraphs 40 and 41 and to include a definition of 'material lending' in the Definitions section. The MFSA Rule on foreign currency lending applies to all financial institutions as defined within that same Rule, in accordance with the proportionality principle referred to in paragraph 10. The materiality principle is only relevant to the reporting obligations. The Authority is currently identifying the financial institutions which carry out material foreign currency lending as defined in the Rule to request them to report their activity. This process will be updated from time to time after the coming into force of the Rules.

3. Paragraph 42 of the Foreign Currency Lending Rule – Submission to the Authority

<p><i>42. Financial Institutions that do not carry out any foreign currency lending should submit a 'Nil' return.</i></p>

Respondent's Comments: A respondent suggested a redrafting of paragraph 42 as follows:

"Financial institutions required to report to the Authority in accordance with Rule 41 which have not carried out any foreign currency lending during the period under review, shall submit a 'Nil' return."

Authority's Comments: The Authority has decided to make the suggested change.

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