

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

5th Circular regarding the EU Markets in Financial Instruments Directive ('MiFID')

28th December 2006

In its second Circular on MiFID, issued on the 23rd October 2006, the MFSA amongst other things brought to the attention of the industry, the CESR consultation document on minimum records. In the MFSA's circular on MiFID dated 27th December 2006, dealing with transaction reporting, the industry was *inter alia* advised to consider and participate in the CESR MiFID consultation on the use of reference data standard codes in transaction reporting. The purpose of this circular is to bring to the attention of the industry two other consultation documents issued by CESR in December in the fields of passporting and inducements.

The Passport Under the MiFiD

Directive 93/22/EEC of 10 May 1993 on investment services (ISD), adopted the approach of effecting only the essential harmonisation necessary and sufficient to secure the mutual recognition of authorisation and of prudential supervision systems. This made it possible to grant a single authorisation valid throughout the European Community and to apply the principle of home Member State supervision. By virtue of mutual recognition, investment firms authorized in their home Member States may provide any or all of the services covered by the ISD for which they have received authorisation throughout the European Community by establishing branches or under the freedom to provide services. The MiFID has adopted the approach of enhancing the degree of harmonisation in order to offer investors a high level of protection and to allow investment firms to provide services throughout the European Community on the basis of home country supervision.

On the 15 December 2006, CESR published on its website a public consultation about the use of the Passport under MiFID (Ref. CESR/06-669). Passporting was identified as one of the key priorities in CESR's MiFID Level 3 work programme. This consultation paper sets out a number of practical proposals and questions for a common approach on the notification procedures set out in Articles 31 and 32 of MiFID. It also elaborates proposals on the future collaboration between the home and host authorities that will be necessary in order to ensure that supervision of cross-border activities under the directive is as clear, efficient and effective as possible.

Inducements

Article 19(1) of MiFID provides that when providing investment services and/or, where appropriate ancillary services to clients, an investment firm must act honestly, fairly and professionally in accordance with the best interests of its clients. Article 26 of Directive 2006/73/EC ('the Implementing Directive') sets further requirements in relation to the receipt or payment by an investment firm of a fee, commission or non-monetary benefit. On the 22nd December 2006, CESR issued a consultation document dealing with a common approach in relation to the inducements regime under MiFID.

Closing Dates

MFSa encourages Investment Services Licence Holders to participate in the CESR consultation process by considering the questions set out in these consultation documents, a copy of which is attached to this document for ease of reference, and sending their responses, via CESR's website (www.cesr.eu) under the section "Consultations", by not later than:

- (a) the 31st January 2007 with respect to the Passporting Consultation Paper; and
- (b) the 9th February 2007 with respect to the Inducements Consultation Paper.

Respondents are also welcome to make any relevant points which they do not think are covered directly by the questions.

Contacts

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