

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

23rd October 2006

On 29 May 2006, MFSA issued a Circular to the financial services industry which had the purpose of providing an overview of the MiFID and of the legislation and other relevant developments relative to this Directive. The said circular formed part of steps that the MFSA is taking in preparation for the transposition and implementation of MiFID. The purpose of this new Circular is to update the industry on developments relating to MiFID.

It should be noted that MiFID's implementing measures have been officially issued on the 10th August, 2006. These consist of:

1. Commission Regulation (EC) No 1287/2006 of 10th August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive; and
2. Commission Directive 2006/73/EC implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organizational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

The MFSA is currently taking the required action in order to transpose the MiFID Framework Directive and the MiFID Commission Directive. MFSA is also considering the manner in which the MiFID Commission Regulation should be implemented. In the coming weeks, the MFSA will be issuing consultation documents outlining the proposed amendments to local securities legislation and the Investment Services Guidelines which will transpose the MiFID Framework Directive and the MiFID Commission Directive.

The MFSA hopes in due course to also specifically outline the manner in which it intends to implement particular provisions of the MiFID Legislation such as transaction reporting. The Circular intends to emphasise once more the importance for Licence Holders to familiarize themselves with the MiFID's requirements, not least in order to be in a better position to participate in MFSA's consultation on the amendments to local legislation which will transpose this directive. The texts of the MiFID Framework Directive and Implementing Measures are hereby attached.

Whilst a thorough reading of the Directives and the Regulation is recommended, the attention of Licence Holders is drawn in particular to:

- a) Title II of the MiFID Framework Directive– dealing with authorisation and Operating Conditions for Investment Firms;
- b) The Commission Directive which spells out the additional requirements with respect to the organization and conduct of business of Licence Holders; and

- c) Chapter II of the Commission Regulation dealing with Record –Keeping relating to client orders and transactions.

We would also like to draw your attention to the attached CESR consultation document on the list of minimum records in Article 51(3) of the MiFID Implementing Directive. The said article of the Commission Implementing Directive establishes that Competent Authorities shall draw up and maintain a list of the minimum records which investment firms are required to keep under MiFID and its implementing measures. In this regard, CESR feels that both investors and industry would benefit from a common approach to the list that the different competent authorities have to draw up by the 31st January 2006.

MFSA encourages Investment Services Licence Holders to participate in the CESR consultation process by considering the questions set out in this consultation document and sending their responses, by not later than the 27th November 2006, via CESR's website (www.cesr.eu) under the section “Consultations”. 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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