

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

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

27th December 2006

The MFSA invites comments by not later than the 24th January, 2007 on the draft new section 8 of Part C I of the Investment Services Guidelines (to be renamed 'Rules') and Appendix 10 thereto attached to this document. Interested parties are to send their comments in writing addressed to the Director – Securities Unit, MFSA.

N.B. As explained in MFSA's circular regarding the EU Markets in Financial Instruments Directive dated 13th November 2006 and its circular on the Capital Requirements Directive dated 6th December 2006, the MFSA plans to adopt Part C I of the Investment Services Rules including the new Section 8 on the 31st January 2007, which rules will be brought into force on the 1st November 2007. In the meantime, SLCs 10.39 to 10.41 of Part C I of the current Investment Services Guidelines and the current Appendix 10 will continue to apply.

1.0 Background

This is MFSA's 4th Circular on MiFID. The 1st Circular on this subject, issued on the 29th May 2006, had the purpose of providing an overview of the MiFID and relevant developments to this Directive. The 2nd Circular, issued on the 23rd October 2006, had the purpose of updating the industry on developments relating to MiFID. The 3rd Circular, issued on the 13th November 2006, served as a 1st Consultation document to the industry outlining the proposed amendments to a number of Sections of Part C I of the Investment Services Guidelines. The purpose of this 4th Circular is to serve as the 2nd Consultation document on MiFID which consultation deals with the transposition/implementation of the MiFID transaction reporting requirements. In this Circular we also draw the industry's attention to a consultation document issued by the Committee of Securities Regulators ('CESR') which deals with the 'Use of reference data standard codes in transaction reporting'.

In addition, with reference to point [2.1] of MFSA's circular on MiFID dated 13th November 2006, we would like to inform you that Section 14 of Part C I of the Investment Services Guidelines which contains specific provisions applicable to Investment Services Licence Holders which are licensed to provide stockbroking services will no longer feature in the new Investment Services Rules. The rules in this section were, in the main, aimed at dealing with market abuse practices, which practices are now regulated by the Prevention of Financial Markets Abuse Act, 2005 regime.

2.0 Transaction Reporting Requirement

[2.1] Investment Services Directive ('ISD') – Transaction Reporting – [Transposition]

Article 20 of the **ISD** required investment firms to report, to the Competent Authority in their Home Member State, all transactions in financial instruments dealt in on a regulated market whether carried out on a regulated market or not. In order to transpose this ISD requirement, in 2004 the MFSA adopted SLC 10.39 to 10.41 of Part C I of the Investment Services Guidelines and Appendix 10 thereto. In 2005, these requirements were brought into force and implemented through the establishment of a transaction reporting web-enabled database.

[2.2] MiFID – Transaction Reporting – [Transposition]

The MiFID also deals with transaction reporting. The main transaction reporting requirements emanate from article 25 of the MiFID framework directive the provisions of which, have been supplemented with the articles in chapter III of the MiFID Commission Regulation. The provisions of article 25 of the MiFID framework directive are being transposed through the SLCs included in the New Section 8 of Part C I of the Investment Services Rules and Appendix 10 thereto, which requirements are the subject of this consultation document. As already indicated, the provisions of the MiFID Commission Regulation will not be transposed but will be directly implemented.

3.0 Principal Changes to the Local Transaction Reporting Regime – [Transposition]

The basic legal transaction reporting requirement under MiFID has not been drastically altered from the legal requirement under the ISD. The main difference being that whereas in terms of the ISD Branches of Investment Firms are obliged to submit transaction reports to the Home Member State, under the MiFID, such transaction reports need to be made to the Host Member State. Reference to Investment Services Licence Holders in this section of the circular shall also be construed as referring to Branches of Investment Firms passporting into Malta.

[3.1] New Section 8 of Part C I of the Investment Services Rules

In terms of the New Section 8 of the Investment Services Rules, Investment Services Licence Holders are still required to:

- [i]** report to the MFSA all trades executed in **ANY** financial instrument admitted to trading on a regulated market, whether or not such transactions were carried out on a regulated market;
- [ii]** report such trades to the MFSA as quickly as possible and no later than the close of the following working day from when the transaction was executed.

The current transaction reporting requirement exemptions will continue to apply. Indeed, Investment Services Licence Holders will be exempt from making a transaction report when:

- [a]** they merely 'arrange deals' by transmitting client's orders to a third party for execution and do not execute the deal themselves (i.e: they do not deal as agent);
- [b]** they are category 1a, 1b or 4 Investment Services Licence Holders;

- [c] they are already subject to a reporting requirement by a regulated market or a multilateral trading facility ['MTF'], in respect of the trade and/or where the regulated market or MTF has been entrusted by the MFSA to act as a reporting channel on behalf of investment services licence holders;
- [d] the transaction is carried out on a regulated market or MTF in another member state or EEA State (its host state), and is subject to a requirement to report the transactions in question to the authority of the Host State.

[3.2] New Appendix 10 of Part C I of the Investment Services Rules

Appendix 10 is still divided into three sections. The first section, which provides guidance in respect of the applicability of the transaction reporting requirement in different scenarios, did not undergo major changes. However, certain scenarios included in this section are currently being discussed at the level of CESR and may need to be revised. The second section outlines the content of a transaction report. This section has been amended considerably to be brought in line with what is prescribed in the MiFID Commission Regulation. The final section explains the new transaction reporting web-enabled database, which database is still under construction.

This consultation document covers the first and second sections of Appendix 10. Section three of Appendix 10 and the new transaction reporting web-enabled database will be the subject of a subsequent circular.

4.0 Principal Changes to the local transaction reporting regime – [Implementation]

With respect to the implementation of the transaction reporting requirements, the MFSA is currently considering the manner in which the current transaction reporting web-enabled database should be enhanced in order to cater for the MiFID requirements. Details of this database will be provided in a subsequent circular which MFSA is planning to issue in the second quarter of next year.

5.0 CESR – First MiFID level III consultation document in the area of transaction reporting

We would like to draw your attention to the consultation document on transaction reporting published by CESR on the 15th December 2006 which consultation document, a copy of which is attached to this circular, deals with the use of reference data standard codes in transaction reporting.

When MiFID comes into force, investment firms will report transactions to their local regulators in accordance with article 25 of the MiFID framework directive. A crucial part of the new reporting framework is the exchange of transaction reports between CESR members. Analysis by CESR has revealed that a working exchange mechanism is in practice achievable only with strict adherence to common and established standards and codes.

CESR has identified a set of standard codes it proposes could be used in the exchange of transaction reporting between CESR Members. These are outlined in the consultation document.

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 15th January 2007, via CESR's web-site (www.cesr.eu) under the section 'Consultations'.

6.0 Contacts

For any additional information in respect of the MiFID transaction reporting project or any queries please do not hesitate to contact:

Mr. Christopher Buttigieg
25485229
cbuttigieg@mfsa.com.mt

Ms. Audrey Aquilina
25485193
aaquilina@mfsa.com.mt

Draft Section 8 of Part C I of the Investment Services Rules

8. Transaction Reporting (Mifid Art. 25)

Mifid Art. 25 8.01 For the purpose of this section of Part C I of the Investment Services Rules, reference to Licence Holder shall also be construed as referring to branches of investment firms passporting into Malta.

8.02 The Licence Holder which executes transactions in any Reportable Instrument shall report the details of such transactions to the MFSA. For the avoidance of doubt, such reporting requirement does not apply to the following categories of Investment Services Licence Holders:

a. Investment Services Licence Holders who merely “arrange deals” by transmitting client’s orders to a third party for execution, and who therefore do not actually execute transactions for clients themselves (i.e. they do not deal as agent);

b. Category 1a, 1b, or 4 Investment Services Licence Holders;

c. Where the Licence Holder is already subject to a reporting requirement by a Regulated Market or an MTF, in respect of the trade and/or where the Regulated Market or MTF has been entrusted by the MFSA to act as reporting channel;

d. Where the Licence Holder has a branch in another Member State and carries out the transaction through the said branch on a Regulated Market or MTF in another EU Member State or EEA State (“its host State”), and is subject to a requirement to report the transaction in question to the authorities in charge of that market.

Reference to Appendix 10 of these Rules should be made. This contains guidance as to:

[i] the applicability of the reporting requirement in different scenarios;

[ii] the information which such transaction reports shall contain; and

[iii] the system through which such transaction reports shall be made.

8.03 Transaction Reports shall be submitted as soon as practicable after the execution of the trade and in any event not later than the close of the following working day. The Licence Holder must notify the MFSA in writing and without delay, of any circumstances which prevent a transaction report being made within the period specified above.

8.04 The Licence Holder shall report such details relating to off-exchange trades which it may execute on behalf of or with clients in relation to instruments listed and traded on a regulated market or an MTF, as the Regulated Market or MTF may request.

8.05 In complying with the provisions of this Part of the Investment Services Rules

Investment Services Licence Holders shall also refer and comply with the applicable provisions of Chapter III of Commission Regulation (EC) No 1287/2006.

Extract from the glossary of terms

Definition of '*reportable instrument*': shall mean a financial instrument which has been admitted to listing and trading on a Regulated Market.

Appendix 10

Transaction Reporting

1.0 Guidance in Respect of the Applicability of the Reporting Requirement in Different Scenarios

For the purpose of this Appendix, reference to investment services licence holder shall also be construed as referring to branches of investment firms passporting into Malta.

<u>Reportable or Not</u>	<u>Situation</u>
(1) Dealing as agent or as principal in instruments traded on a Maltese regulated market, irrespective of whether such trades were transacted on the said Maltese regulated market or an MTF or off-exchange;	Exemption (c) of SLC 8.02 applies The investment services licence holder does not need to report directly to the MFSA as the Maltese regulated market or MTF is/will be required in terms of Law to report all applicable transactions (whether on or off-exchange) itself.
(2) Dealing as agent on-exchange (on a EU regulated market or on an MTF) in instruments traded on an EU regulated market (other than a Maltese regulated market), meaning that the investment services licence holder, has been given access to the trading platform of the said EU regulated market or an MTF in his offices in Malta, is a member of the said EU regulated market or MTF and has dealt directly on the said EU regulated market or MTF on behalf of a client, in the clients own name or as trustee/nominee.	The investment services licence holder is required to report such transactions to the MFSA. In the case of branches of investment services licence holders exemption (d) of SLC 8.02 applies.
(3) Dealing as agent off-exchange (outside a regulated market or an MTF) in instruments traded on a Regulated Market (other than a Maltese regulated market), meaning that the investment services licence holder finds a buyer or a seller for his client, off-exchange (outside a regulated market or an MTF) and executes the trade on behalf of the client	The investment services licence holder is required to report such transactions to the MFSA. In the case of branches of investment services licence holders exemption (d) of SLC 8.02 applies.

whether in his own name or under the investment services licence holder's nominee/trustee account.

- (4) Arranging for a client to deal in an instrument traded on a Regulated Market (other than a Maltese regulated market), meaning that the investment services licence holder merely transmits the order of the client to another investment firm which executes the transaction in the clients own name.

Exemption (a) of **SLC 8.02** applies

The investment services licence holder transmitting the order is not required to report to the MFSA as it is merely transmitting this order to another investment firm.

The investment firm which ultimately executes the transaction will be required to report this trade. Where such investment firm is an investment services licence holder, such reporting shall be made to the MFSA.

- (5) Arranging for a client as his nominee/trustee, to deal in an instrument traded on a Regulated Market (other than a Maltese regulated market), meaning that the investment services licence holder merely transmits the order to another investment firm which executes the transaction in the name of the licence holder which is acting on behalf of the client, but which is not executing the transaction itself.

Exemption (a) of **SLC 8.02** applies

The investment services licence holder transmitting the order is not required to report to the MFSA as it is merely transmitting this order to another investment firm.

The investment firm which ultimately executes the transaction will be required to report this trade. Where such investment firm is an investment services licence holder, such reporting shall be made to the MFSA.

2.0 The Content of a Transaction Report

The fields listed and described below represent the type of information necessary for reporting a transaction to the MFSA in accordance with the MiFID Article 25 (3) and as detailed and implemented by Regulation (EC) No. 1287/ 2006 Annex 1 Table 1.

Reporting Party Identification	A unique code to identify the firm filing the transaction report.
Instrument Type	The classification of the financial instrument that is the subject of the transaction.
Instrument Identification	A unique code identifying the financial instrument which is the subject of the transaction.
Instrument Code Type	The code type used to report the instrument.
Underlying Instrument Identification	The instrument identification applicable to the security.
Underlying Instrument Identification Code Type	The code type used to report the underlying instrument.
Trading Date	The trading day on which the transaction was executed.
Trading Time	The time at which the transaction was executed.
Buy/ Sell	Identifies whether the transaction was a buy or sell from the perspective of the reporting investment firm.
Trade Price/ Unit	The price per security or derivative contract excluding commission and (where relevant) accrued interest.
Trade Price Notation	The currency in which the price is expressed.

Quantity	The number of units of the financial instruments, the nominal value of bonds, or the number of derivative contracts in the transaction.
Quantity Notation	An indication as to whether the quantity expressed is the number of units of financial instruments, the nominal value of the bonds or the number of derivative contracts.
Maturity Date	The maturity date of a bond or other form of securitised debt, or the exercise date/ maturity date of a derivative contract.
Derivative Type	The harmonised description of the derivative type.
Put/ Call	Specification as to whether an option or any other financial instrument is a put or a call.
Strike Price	The strike price of an option or other financial instrument.
Price Multiplier	The number of units of the financial instrument in question which are contained in a trading lot.
Venue Identification	Identification of the venue where the transaction was executed.
Trading Capacity	Identifies whether the firm executed the transaction on own account (either on its behalf or on behalf of a client) or for the account, and on behalf, of a client.
Counterparty	Identification of the counterparty to the transaction.
Transaction Reference Number	A unique identification number for the transaction provided by the investment firm or a third party reporting on its behalf.
Cancellation Flag	An indication as to whether the transaction was cancelled.

Please note that the MFSA may exercise its right under Regulation (EC) No. 1287/2006 Regulation 13 (3) and 13 (4) to require additional information in respect of transactions to that specified above which information is necessary in enabling the MFSA to monitor the activities of investment firms and to ensure that they act honestly, fairly and professionally.

3.0 Transaction Reporting System

This section of the Appendix will be finalised once the transaction reporting web-enabled database is finalised. This section Appendix 10 and the new transaction reporting web-enabled database will be the subject of a subsequent circular.



Ref: CESR/06-648b

**Directive on Markets in Financial Instruments
(MiFID)**

**USE OF REFERENCE DATA STANDARD
CODES IN TRANSACTION REPORTING**

Public Consultation

December 2006



Background

CESR is currently actively working to facilitate a smooth implementation of the MiFID (Markets in Financial Instruments Directive). As part of this exercise several consultative papers on the functioning of the directive are and will be consulted upon. One specific aspect of MiFID is transaction reporting by firms.

Investment firms will report all transactions they execute in instruments admitted to trading in regulated markets to their local Competent Authority from the 1st of November 2007. The new reporting will replace existing reporting regimes in all EEA Countries.

Competent Authorities will exchange some of these reports in accordance with the Directive and its implementing measures in order to ensure that the Competent Authority of the Most Relevant market in Terms of Liquidity also receives this information and to comply with other provisions in the Directive.

CESR has established a project to set-up a mechanism for the interchange. This Transaction Exchange Mechanism (TREM) project is supervised by CESR-Tech the IT Specialised body of CESR. This consultation facilitates the work of CESR-Tech and the TREM project.

1. When MiFID comes into force, investment firms will report transactions to their local regulators in accordance with article 25 of the directive. Intensive planning is under way at the level of individual CESR Members as well as within CESR.
2. A crucial part of the new reporting framework is the exchange of transaction reports between CESR members. One part of a working mechanism is common standard codes. Analysis by CESR has revealed that a working exchange mechanism is in practice achievable only with strict adherence to standards.
3. CESR has identified a set of standard codes it proposes could be used in the exchange of transaction reporting between CESR Members. These are listed in Annex 1.
4. The standards used between CESR Members do not automatically dictate the standards to be used by investment firms in reporting to their local CESR Member, but there is a strong link between these two. Investment firms in any particular country would therefore either have to report transactions to the local CESR Member in the same format that is used between CESR Members, or the CESR Member would have to convert the data from one format to another.
5. The internal CESR coding standards might therefore have an impact on coding standards investment firms will have to use in transaction reporting and also on those who provide the industry with these standards. It is also likely that the use of these standards will encourage the use of these standards in the financial industry.
6. Article 25 and allows individual Member States to collect additional information as part of transaction reporting. The use of coding standards has no impact on this provision.

Call for comments

7. CESR therefore arranges an open consultation on the use of standard codes. Comments are welcome on all aspects of the issue. However, we have included a number of questions to draw your attention to those areas where it would be particularly helpful to receive your views.



Open Hearing

8. An Open Hearing will be held at CESR in Paris on the 8th January 2007 13.00 – 16.00. Those who intend to participate in the open hearing should register online via CESR's website under the heading "Hearings".

Consultation period

9. The consultation closes on 15 January 2007. Responses to the consultation should be send via CESR's website (www.cesr.eu) in the section "Consultations"

Consultation questions

- A. Do you think that the standards chosen by CESR are the relevant ones?
- B. What would be the benefits if these standards were also widely used in reporting by the investment firms to the local CESR Member?
- C. What are the practical implications of the use of these standards for the financial industry?
- D. Do you have comment on individual standards?



Annex 1	List a standard codes for the exchange of transaction reporting between Competent Authorities in accordance with Article 25 in the MiFID
Standard	The SWIFT / Bank Identifier Code (BIC) ISO 9362
Format	Eleven alphanumeric characters See http://www.swift.com/biconline/index.cfm?fuseaction=display_aboutbic
Standard	The ISO 8601 Date Format standard
Format	YYYYMMDD or YYYY-MM-DD See http://www.iso.org/iso/en/prods-services/popstds/datesandtime.html
Standard	The ISO 8601 Time
Format	HHMMSS or HH:MM:SS A separate field is used with values '+HH' or '-HH' to indicate that the used local time zone is HH hours ahead or behind UTC. See http://www.iso.org/iso/en/prods-services/popstds/datesandtime.html
Standard	ISIN code ISO 6166.
Format	See http://www.anna-web.com/ISO_6166/iso_standard.htm
Standard	The full ISO 10962 CFI code
Format	See http://www.anna-web.com/ISO_10962/iso10962.htm .
Standard	ISO 4217 currency codes
Format	See http://www.iso.org/iso/en/prods-services/popstds/currencycodeslist.html
Standard	SWIFT MIC code ISO 10383
Format	See http://www.iso15022.org/MIC/ISO10383_MIC_v1_28.pdf
Standard	ISO 3166-1 country codes
Format	See http://www.iso.org/iso/en/prods-services/iso3166ma/02iso-3166-code-lists/index.html