

# MFSA

## MALTA FINANCIAL SERVICES AUTHORITY

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

27<sup>th</sup> December 2006

*The MFSA invites comments by not later than the 24<sup>th</sup> 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 13<sup>th</sup> November 2006 and its circular on the Capital Requirements Directive dated 6<sup>th</sup> December 2006, the MFSA plans to adopt Part C I of the Investment Services Rules including the new Section 8 on the 31<sup>st</sup> January 2007, which rules will be brought into force on the 1<sup>st</sup> 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 4<sup>th</sup> Circular on MiFID. The 1<sup>st</sup> Circular on this subject, issued on the 29<sup>th</sup> May 2006, had the purpose of providing an overview of the MiFID and relevant developments to this Directive. The 2<sup>nd</sup> Circular, issued on the 23<sup>rd</sup> October 2006, had the purpose of updating the industry on developments relating to MiFID. The 3<sup>rd</sup> Circular, issued on the 13<sup>th</sup> November 2006, served as a 1<sup>st</sup> 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 4<sup>th</sup> Circular is to serve as the 2<sup>nd</sup> 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 13<sup>th</sup> 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 15<sup>th</sup> 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 15<sup>th</sup> January 2007, via CESR's web-site ([www.cesr.eu](http://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:

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## **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 <b>SLC 8.02</b> 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 <b>SLC 8.02</b> 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 <b>SLC 8.02</b> 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.

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

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