

# MFSA

## MALTA FINANCIAL SERVICES AUTHORITY

### **Circular addressed to the financial services industry regarding Malta's transposition/implementation of the EU Markets in Financial Instruments Directive ('MiFID')**

**29<sup>th</sup> May 2006**

#### **1.0 Background**

The purpose of this circular is to provide the financial services industry with:

- (a) an overview of the **MiFID** and recent developments relative to this European Directive and;
- (b) a tentative timetable for the completion of the transposition and implementation of **MiFID** within the established EU deadlines.

#### **1.1) What is MiFID?**

The **MiFID** replaces the Investment Services Directive, which will be repealed on the 1<sup>st</sup> November 2007. This new Directive is a central element of the Commission's Financial Services Action Plan. **MiFID** introduces a comprehensive regulatory regime covering investment services, trading platforms (including regulated markets, multilateral trading facilities and systematic internalisers) and financial markets in Europe and was formulated with the ultimate aim of opening up Europe's capital markets by improving the price transparency of traded financial instruments, while making it easier to execute trades across borders.

**MiFID** establishes a wide ranging authorisation requirement covering all the service providers mentioned above and sets: (a) rules regulating the operation/administration and conduct of business of investment firms; (b) pre/post transparency requirements applicable to trading platforms; (c) enhanced transaction reporting requirements and enforcement and exchange of information provisions. The **MiFID** also updates the 'single passport' for investment firms and extends the list of services (includes investment advice and the operation of an MTF) and financial instruments.

Once implemented, the **MiFID** has the potential of substantially: (i) improving the quality of execution of investor transactions; (ii) bettering the organisation and functioning of investment firms; (iii) enhancing investor protection *inter alia* by way of a comprehensive set of rules governing the relationship which investment firms have with their clients; and (iv) facilitating cross border trading and thereby ensuring the integration of EU Capital Markets.

Implementation of **MiFID** poses a considerable challenge and it's the MFSA's intention to ensure that this is undertaken in a realistic manner, taking into account the size of Malta's financial services operators.

## (1.2) MiFID – Implementing Measures

**MiFID**, introduced under the Lamfalussy procedure<sup>1</sup>, will be supplemented by technical implementing measures ('level 2' measures), to be adopted by the European Commission ('**Com**') during the period for transposition by the Member States ('**MS**'). The **Com** can only issue 'level 2' measures in those areas where the **Com** has been granted 'delegated powers' by **MiFID**.

The **Com** has so far issued two draft implementing measures, one in the form of a **Com** Directive and the other in the form of a **Com** Regulation. While the provisions of the draft **Com** Directive, once adopted, will need to be transposed into national law, a Regulation becomes part of the domestic legal system and does not need to be transposed into national law. It is important to note that the **Com** emphasises that when transposing the draft **Com** Directive, *'it should not be necessary for MS to add supplementary rules over and above what is in the Directive'*. In fact, article 4 of the draft **Com** Directive seeks to limit MS freedom to add further obligations at national level to those contained in **MiFID**. Accordingly, when preparing the legal measures which will transpose the **MiFID**, the MFSA will, as much as possible, try to ensure that the Maltese securities legal framework does not go beyond what is stipulated in this EU Directive and the implementing measures.

The draft **Com** Directive deals with those areas where there is a relationship between the Investment firm and the client and establishes a highly harmonised regime covering inter alia: (a) conduct of business requirements for firms; and (b) organisational requirements for firms and markets. On the other hand, the draft **Com** Regulation takes care of the core issues relating to transparency and the functioning of trading platforms therefore covering: (a) transaction reporting; and (b) transparency requirements.

The draft 'level 2' measures were, in Jan/Feb 2006 sent to the European Parliament and members of the European Securities Committee ('**ESC**'). The European Parliament has three months from the said date to examine and formulate observations on them. The **ESC** is due to deliver its opinion on them at the beginning of June 2006, after which the European Parliament will have an extra month to review the measures again. All things being equal, the **Com** has indicated that the draft 'level 2' measures will probably be formally adopted by the **Com** during Summer 2006.

## (1.3) MiFID – Transposition / implementation deadlines

The transposition period, by which Member States are bound to adopt national legislation in order to enact the **MiFID** and the 'level 2' measures into national law elapses on 31 January 2007. These new rules shall be applicable and must be implemented by the 1st November 2007 by which date, the industry must come in line with the new requirements.

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<sup>1</sup> Lamfalussy Directives are split into two levels – the 'level 1' Directive (**MiFID**) establishes the guiding principles of the legislation agreed in co-decision by the European Parliament / Council and the level 2 technical implementing measures render the 'level 1' principles operational, can be adopted, adapted and updated by the Commission after having been submitted to the **ESC** – a committee composed mainly of members of Ministries of Finance – and the European parliament for their opinion.

#### **(1.4) Familiarisation**

In June 2005 the MFSA organised a one day industry conference on the implementation of **MiFID** during which members of the financial services industry were given the opportunity to start familiarising themselves with this EU Directive. This one day seminar complimented a training programme on Investment Services Regulation organised by the MFSA in conjunction with the IFS (Malta) in April 2005 during which presentations on this EU Directive were also delivered.

**MiFID** is an EU Directive with respect to which on-going changes are taking place. The MFSA encourages Investment Services Licence Holders to keep abreast with these changes by referring to the web-sites of the Committee of European Securities Regulators [[www.cesr.org](http://www.cesr.org)] and that of the European Commission [[http://ec.europa.eu/internal\\_market/securities/isd/index\\_en.htm](http://ec.europa.eu/internal_market/securities/isd/index_en.htm)]. In particular the MFSA encourages Licence Holders to familiarise themselves with the requirements emanating from the **MiFID** framework directive and the draft implementing measures.

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#### **2.0 Malta's MiFID Transposition Tentative Time-Table**

**Time-table outlining *tentative* deadlines for the transposition and implementation of MiFID bearing in mind the Jan 2007 /Nov 2007 EU deadlines:**

**1) BEG Nov 2006 - Issue of consultation document to the Industry outlining proposed changes to the Investment Services Act, 1994 ('ISA') and the Financial Markets Act, 1990 ('FMA') Regulations, the ISA Guidelines and the FMA directives – Closing of consultation period MID DEC 2006.**

**2) END - JAN 2007 – Coming into force of the changes to the legislation which will transpose the MiFID, and issue of revised ISA Guidelines and FMA directives.**

**3) FEB 2007 - END - NOV 2007 - Assisting the industry to comply with the new MiFID legislative and regulatory framework, including:**

- (a) the application of the Regulated Markets and the MTF transparency requirements;
- (b) the implementation of the technical side of the **MiFID** transaction reporting regime;
- (c) the adoption/implementation of policies required by the **MiFID** regime such as policies to cover conflicts of interests and best execution of orders.

The assistance to the industry is likely to take the form of seminars organised by the Authority as well as guidance notes which will be issued to explain the new **MiFID** requirements and to provide further clarity on the manner in which such requirements are to be interpreted and complied with by practitioners.

As indicated above, the above-mentioned time-frames are only **TENTATIVE** at this stage. Although every effort will be made for such time-frames to be respected, issues may in the meantime arise, including factors beyond MFSA's control, which may necessitate their revision. In such event, an up-date will be circulated accordingly.

## **Contacts**

Should have any queries regarding **MiFID** please do not hesitate to contact:

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