

8 May 2020

COVID-19: **Firms' MiFID II Conduct of Business Obligations**

Circular addressed to Investment Services Licence Holders

(MiFID Investment firms)

Background

The spread of COVID-19 around the world has been a major shock to the economy and financial markets. Amid such exceptional circumstances, several National Competent Authorities have noticed a significant increase in the number of investment accounts that are being opened by retail clients and a surge in trading by retail clients.

The European Securities and Markets Authority (ESMA) has issued a public statement on 6 May 2020 relating to these matters, which may be accessed [here](#).

Trading by retail clients during the current uncertain period

ESMA has highlighted the risks for retail clients when trading under these highly uncertain and unprecedented market circumstances.

This Circular draws Investment Firms' attention on these risks and to remind such Firms of their conduct of business obligations under MiFID II.

Conduct of Business Obligations

Investment Firms are reminded to act honestly, fairly and professionally in accordance with the best interests of their clients when providing investment or ancillary services and to comply with all relevant MiFID II conduct of business and related organizational requirements. In particular, product governance requires, information disclosure, suitability and appropriateness requirements.

Investment firms must have adequate product governance arrangements in place to ensure that financial instruments will only be offered when in the interest of the client or potential client. Furthermore, the target market assessment that should be carried out by Firms should be done in an appropriate and proportionate manner, taking into account the nature of the financial instrument and the investment service provided. In this light it should be noted that in cases of more complicated financial instruments, the target market should be identified with more detail.

Firms should provide information in good time to clients with regard to the investment firm and its services and the financial instruments offered. Information about the financial instruments must include an appropriate description of the nature and risk of the financial instruments to enable the client to take investment decisions on an informed basis. The description shall also explain whether the financial instrument is intended for retail or professional clients.

Services offered to clients or potential clients

Reference is made to situations where investment advice or portfolio management is provided. In such cases, firms must ensure to obtain the necessary information regarding the client's or potential client's knowledge and experience, his financial situation including his ability to bear losses, and his investment objectives including his risk tolerance to assess whether the financial instrument or service is suitable for the client. In this case, firms should pay particular attention to the possible ramifications of the COVID-19 crisis for the client's personal situation and the risk profile of his financial instruments, to ensure that these financial instruments are suitable for such client.

When providing services other than investment advice or portfolio management, firms must obtain information regarding one's knowledge and experience. The appropriateness assessment is particularly important for new clients wishing to invest in complex instruments during these times of intensified market volatility. Firms should ensure that they correctly categorize financial instruments for the purpose of the appropriateness assessment.

Under certain conditions, when providing the investment services of execution or reception and transmission of client orders with respect to non-complex instruments, firms are allowed to provide those investment service without the need to undertake an appropriateness assessment. In such cases, when providing investment services that fall under this execution-only exemption, firms still need to comply with the other requirements outlined in this circular, especially those relating to providing governance and information to clients.

Conclusion

We trust that this circular serves as a reminder to investment firms regarding their conduct of business obligations and related organizational requirements under MiFID II.

Should you require any further information or clarifications, do not hesitate to contact Conduct Supervision Officials via email on offsiteinv@mfsa.mt.