

20 July 2021

Conduct of Business Rulebook Revisions

Reference is made to the Conduct of Business Rulebook ('Rulebook') originally issued by the Malta Financial Services Authority ('the Authority') on 20 December 2017. A copy of the revised Rulebook can be found on the Authority's website and accessed [here](#).

The changes carried out to the Rulebook are the following:

Requirements Applicable to the Securities and Investments Sector

[i] ESMA Guidelines on certain aspects of MIFID II Compliance Function Requirements

The ESMA Guidelines on certain aspects of MIFID II Compliance Function Requirements have been adopted on 5 June 2020 and replaced the ESMA guidelines on the same subject-matter issued in 2012. The objectives of these Guidelines are primarily to establish consistent, efficient and effective supervisory practices and to ensure the common, uniform and consistent application of certain aspects of the MiFID II compliance function relating to the requirements of Article 16(2) and 22 of MIFID II Commission Delegated Regulation (EU) 2017/565 as regards organisational requirements and operating conditions.

Amendments have been carried out to the Rulebook in order to reflect some of the relevant provisions of the said Guidelines. Requirements have been included in relation to the compliance monitoring of complaints process (*R.4.6.8*) and segregation of compliance and complaints function and management of conflicts of interest (*R.4.6.5*).

New Rules have also been included in respect of compliance reporting obligations in the context of product governance (*New R.2.76 COBR and G 2.6*) as well as in relation to the advisory and assistance obligations of the compliance function (*New R.4.4.10 to R.4.4.12*).

[i] Amendments of Rulebook provisions Transposing Article 44a of Directive 2014/59/EU as amended by the [BRRD2](#)¹

Article 44a of Directive 2014/59/EU (as introduced by the BRRD2) has been transposed in the Rulebook on 20 January 2020, specifically in Part E, Section 1 of Chapter 4 thereof. Therefore, MiFID firms offering to Retail Clients subordinated Eligible Liabilities, issued on or after the 28 December 2020, need to comply with the requirements set out in Chapter 4, Section 1, Part E of the Rulebook.

¹ BRRD 2 refers to Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive (EU) 2014/59 as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC

In this respect, further amendments have been carried out primarily to:

(a) Clarify the scope and applicability of the relevant provisions as follows:

- the current Rulebook definition of 'Subordinated Eligible Instruments/Liabilities' is substituted with a new definition of "**Eligible Liabilities**" to reflect fully the provisions of point 71(a) of Article 2(1) of Directive 2014/59/EU as amended by the BRRD2;
- a new definition of "**Bail-inable Liabilities**" is introduced – a term used in the definition of "Eligible Liabilities" referred to above – so as to reflect fully the provisions of point 71 of Article 2(1) of Directive 2014/59/EU as amended by the BRRD2;
- Rule R.4.1.47 is amended to clarify which eligible liabilities meeting certain criteria are subject to the requirements related to the selling of subordinated Eligible Liabilities to Retail Clients, in accordance with Article 44a(1) of Directive 2014/59/EU as amended by the BRRD2.

(b) Clarify further the instances where the sale of liabilities referred to in R.4.1.47 to retail client is not to proceed.

In this respect a new proviso to R.4.1.47 has been introduced to specify that the Regulated Person shall ensure that such liabilities are not sold to the Retail Client by the Regulated Person where it considers that:

- the Subordinated Eligible Liabilities are not suitable for the relevant Retail Client;
- the information provided by the retail Client is not reliable, accurate or sufficient to perform the suitability test referred to in R.4.1.47 (a) and, or the verifications required in terms of R.4.1.48 and R.4.1.49.

This is in line with what is outlined in Section 18 of the [ESMA Q&AS on MIFID II and MIFIR investor protection topics](#) and in the [second EU Commission Notice](#) relating to the interpretation of certain legal provisions of the revised bank resolution framework.

Requirements Applicable to the Insurance Sector

[i] *Amendment applicable to Insurance Brokers in Chapter 1 of the Rulebook*

In Section 4.0 of the MFSA [Consultation Document on the amendments to Chapter 4 of Part A of the Insurance Distribution Rules](#) (Ref: 03 – 2021) issued on 23 April 2021 reference was made to proposed Rulebook amendments to include new requirements on insurance brokers entering into a credit risk transfer agreement.

In this respect the said requirements are being introduced by means of a new Rule R.1.5.19. Reference is also to be made to the [Feedback Statement](#) to the said Consultation and relevant [Circular](#) issued on 20 July 2021.

Summary of Amendments

The below table summarises the amendments made:

Definitions/Glossary Section	Substitution of Definition of <i>"Subordinated Eligible Instruments/Liabilities"</i> with a new Definition of <i>"Eligible Liabilities"</i> ; as well as the insertion of a new Definition of <i>"Bail-inable Liabilities"</i> in the Definitions/Glossary section.
Part E, Section 1, Chapter 4	Amendments have been carried out primarily to clarify the scope and applicability, as well as to clarify further the instances where the sale of liabilities to retail client is not to proceed.
R.2.76 COBR and G 2.6; R.4.4.10 to R.4.4.12; R.4.6.5; R.4.6.8	Amendments and new Rules have been included to introduce relevant requirements in relation to the Compliance Function pursuant to the ESMA Guidelines.
R.1.5.19	New requirements applicable to insurance brokers introduced further to the Consultation Document on the amendments to Chapter 4 of Part A of the Insurance Distribution (Ref: 03 – 2021) issued on 23 April 2021.

Contacts

Any queries or requests for clarifications on the contents of this Circular should be addressed to Conduct Supervision on financialpromotion@mfsa.mt.