

14 February 2022

## 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 can be accessed [here](#).

The changes carried out to the Rulebook are the following:

### **Requirements Applicable to the Securities and Investments Sector**

#### **1. Adoption of Member State Option in Article 44a(1), second subparagraph of Directive 2014/59/EU (as amended by the BRRD<sup>1</sup>).**

Article 44a of Directive 2014/59/EU (introduced by the BRRD2), relating to the *selling of subordinated eligible liabilities to retail clients*, has been transposed in the Rulebook on 20 January 2020, specifically in *Part E, Section 1 of Chapter 4* thereof (*vide R.4.1.49 to R.4.1.53*).

In this respect, further amendments are being carried out primarily to specifically adopt the Member State option and discretion laid down in **Article 44a(1), second subparagraph**, which allows Member States to extend protection to retail clients purchasing other instruments qualifying as own funds or bail-inable liabilities.

The said Member State option provides the following:

*“1. Member States shall ensure that a seller of eligible liabilities which meet all conditions referred to in Article 72a of Regulation (EU) No 575/2013 except for point (b) of Article 72a(1) and paragraphs 3 to 5 of Article 72b of that Regulation sells such liabilities to a retail client, as defined in point 11 of Article 4(1) of Directive 2014/65/EU, only where all of the following conditions are fulfilled:*

- (a) the seller has performed a suitability test in accordance with Article 25(2) of Directive 2014/65/EU;*
- (b) the seller is satisfied, on the basis of the test referred to in point (a), that such eligible liabilities are suitable for that retail client;*
- (c) the seller documents the suitability in accordance with Article 25(6) of Directive 2014/65/EU.*

***Notwithstanding the first subparagraph, Member States may provide that the conditions laid down in points (a) to (c) of that subparagraph shall apply to sellers of other instruments qualifying as own funds or bail-inable liabilities.***

---

<sup>1</sup> 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 view of the above, the **new Rule R.4.1.50** aims to apply all<sup>2</sup> the requirements laid down in Part E, Section 1 of Chapter 4 of the Rulebook (which transpose the said Article 44a) also with respect to **Additional Tier 1 instruments and Tier 2 instruments** sold to retail clients.

Definitions of “*Additional Tier 1 instruments*” and “*Tier 2 instruments*” are also being introduced in the Glossary of the Rulebook, in accordance with the definitions set out in Directive 2014/59/EU.

## **Summary of Amendments**

The below table summarises the amendments made:

Amendment of Part E, Section 1 of Chapter 4 of the Rulebook - R.4.1.49 and new R.4.1.50  New definitions “ <i>Additional Tier 1 instruments</i> ” and “ <i>Tier 2 instruments</i> ”	Adoption of Member State Option and discretion laid down in Article 44a(1), 2 <sup>nd</sup> subparagraph of Directive 2014/59/EU as amended by the BRRD2.
---	---

## **Contacts**

Any queries or requests for clarifications on the contents of this Circular should be addressed to Conduct Supervision on [financialpromotion@mfsa.mt](mailto:financialpromotion@mfsa.mt).

---

<sup>2</sup> In line with the answer to Question 14 (Article 44a(1)) of [COMMISSION NOTICE relating to the interpretation of certain legal provisions of the revised bank resolution framework in reply to questions raised by Member States’ authorities \(2020/C 321/01\)](#), all the requirements laid down in Article 44a (and not only the provisions of Article 44A(1)(a) to (c)) are made applicable to Additional Tier 1 and Tier 2 instruments sold to retail clients.