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ESMA Supervisory Briefing on Supervisory Expectations in Relation to Firms using Tied Agents in the MiFID II Framework

Background and Scope

In accordance with the ESMA Regulation, one of ESMA's objectives is to actively foster supervisory convergence across the Union with the aim of establishing a common supervisory culture.

Following the UK withdrawal from the EU, ESMA has been monitoring the behaviour of firms¹ in order to understand whether their interaction with EU-based clients is done in a way that is compliant with the MiFIR and MiFID legislation (including the regimes providing the conditions for third-country firms to provide investment services and activities in the Union). In this context, some practices concerning investment firms using tied agents recently emerged as a potential source of circumvention of the abovementioned legal framework.

Furthermore, ESMA believes that these issues have a more general relevance, and it is thereby important to identify the supervisory expectations on firms using tied agents in a convergent manner across the Union. In this context, ESMA has issued a [supervisory briefing](#) which takes into account all cases where a firm uses tied agents with specific focus given to cases where tied agents are legal persons that are controlled or have close ties with other entities (including those located in a third-country jurisdiction).

This supervisory briefing provides indications to market participants of compliant implementation of the MiFID II provisions relating to tied agents and covers the following aspects:

- a) The supervisory expectations when firms appoint tied agents, and
- b) The supervisory expectations on firms using tied agents in their on-going activities.

Target Audience

This supervisory briefing is intended to apply to firms authorised by the MFSA to provide (or applying for authorisation to provide) investment services through the use of tied agents, in

¹ In this supervisory briefing "firms" means investment firms and credit institutions (refer to footnotes (3), (4), (6) and (7) of the Supervisory Briefing for further details).

particular, tied agents which are legal persons and which are controlled by or have close ties with other entities, including third-country entities.

Next Steps

The Authority expects firms that operate through the use of Tied Agents to assess the implications of this briefing to their operations and to implement any changes as necessary. The Authority will be also liaising directly with its licence holders as it deems appropriate.

Contacts

Should you have any queries regarding the above, please do not hesitate to contact: csuinvestments@mfsa.mt.