

User Guidelines – Investment Services Act and Banking Act (MiFID and MiFIR Administrative Penalties, Measures and Investigatory Powers) (Amendment) Regulations, 2022

Introduction

The primary objective and purpose of the Investment Services Act and Banking Act (MiFID and MiFIR Administrative Penalties, Measures and Investigatory Powers) (Amendment) Regulations, 2022 ('the Amending Regulations'), is to partially transpose and implement the following EU Directive and EU Regulation respectively:

1. Directive (EU) 2019/2177 of the European Parliament and of the Council of 18 December 2019 amending Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), Directive 2014/65/EU on markets in financial instruments and Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing, but only insofar as it amends Directive 2014/65/EU, ('Directive (EU) 2019/2177'); and

2. Regulation (EU) 2019/2175 of the European Parliament and of the Council of 18 December 2019 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, and Regulation (EU) 2015/847 on information accompanying transfers of funds, but only insofar as it implements the relevant provisions of Regulation (EU) No 600/2014, ('Regulation (EU) 2019/2175').

Directive 2014/65/EU¹ ('MIFID II') and Regulation (EU) No 600/2014² ('MiFIR') seek to promote transparency in the financial markets and integrate European financial markets. One of the ways in which these aims are achieved is through the designation of entities which are responsible for the publication and reporting requirements which investment firms and operators of trading venues are obliged to fulfil in terms of MiFIR. These entities are known as data reporting service providers ('DRSPs'). There are three types of DRSPs, namely the following, which are defined in regulation 2 of the Amending Regulations:

- **Approved Publication Arrangements** ('APAs') which are the entities responsible for the publication of post-trade reports on behalf of investment firms;
- **Approved Reporting Mechanisms** ('ARMs') which report details of transactions to the competent authorities or to European regulatory authorities or the European Securities and Markets Authority ('ESMA') on behalf of investment firms; and

¹ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

² Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012.

- **Consolidated Tape Providers** ('CTPs') which are persons authorised to provide the service of collecting trade reports for certain financial instruments from regulated markets, multilateral trading facilities ('MTFs'), organised trading facilities ('OTFs') and APAs, and consolidating them into a continuous electronic live data stream providing price and volume data per financial instrument.

Prior to the amendments to MiFID II introduced by Directive (EU) 2019/2177, the authorisation and supervision of DRSPs was the responsibility of designated national competent authorities in each Member State. The aforementioned amendments now designate ESMA as the main authority responsible for the authorisation and supervision of DRSPs. However, since some APAs and ARMs are deemed to be of limited relevance for the internal market, a derogation was provided whereby the authorisation and supervision of such APAs and ARMs would still rest with the national competent authority – in Malta's case, with the MFSA.

In order to transfer the authorisation and supervision of DRSPs to ESMA, on an EU level the provisions set out in MiFID II dealing with the authorisation and supervision of DRSPs were deleted and subsequently reintroduced in MiFIR. In this respect, the provisions which transposed such provisions in MiFID II into our local legislation needed to be amended to establish the new provisions under MiFIR as the applicable legal basis.

In this respect, the Investment Services Act and Banking Act (MiFID and MiFIR Administrative Penalties, Measures and Investigatory Powers) Regulations (the 'Principal Regulations') are being amended through the Amending Regulations.

Target Audience/ Users

The amendments to the Principal Regulations may impact the following entities:

- entities seeking authorisation from the MFSA to provide the service of an APA or an ARM which has a derogation in accordance with Article 2(3) of MiFIR in or from Malta; and
- investment firms seeking to offer the service of an APA or an ARM which has a derogation in accordance with Article 2(3) of MiFIR in or from Malta.

Applicability of the Amending Regulations on Users

The Amending Regulations set out administrative measures emanating from Directive (EU) 2019/2177, which the MFSA, as the national competent authority in Malta responsible for the authorisation and supervision of APAs and ARMs which have a derogation in accordance with Article 2(3) of MiFIR, may impose.

Entities seeking authorisation from the MFSA to provide the service of an APA or an ARM which has a derogation in accordance with Article 2(3) of MiFIR in or from Malta should be aware of the administrative measures which may be imposed on them for breaches of the provisions set out in MiFID II (as transposed in local legislation) and MiFIR, and any Level 2 legislation issued thereunder, in relation to DRSPs.

Contact

For any queries with respect to the Amending Regulations, kindly contact the MFSA on 21441155 or by e-mail on communications@mfsa.mt

These User Guidelines should be read in conjunction with and as supplementary guidance to the Regulations, and should not be deemed to substitute a thorough reading thereof. These User Guidelines are not intended to be an exhaustive description of the legal instrument nor a substitute thereof or a legislative supplement to it. Moreover, these User Guidelines do not purport to be an authoritative ruling on the interpretation of the law. For the avoidance of any doubt, these User Guidelines do not have the force of law and, accordingly, in the event of any conflict between these User Guidelines and the Regulations, the Regulations shall in all circumstances prevail.