

29 July 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 being carried out to the Conduct Rulebook relate to implementing all the changes made by means of the three (3) Amending Delegated Acts referred to below which primarily aim to **integrate sustainability issues and considerations into the IDD and MIFID**.

The amendments carried out to the Rulebook are primarily highlighted within sections 2 and 3 of this Circular, including three (3) distinct Tables for each Amending Delegated Act together with the corresponding provision within the Rulebook where the changes are being implemented:

### 1. Background

#### ***The SFDR Legal Framework***

Several provisions of Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector, (*the “SFDR”*) came into force on **10 March 2021**. The SFDR sets out sustainability-related disclosure requirements for financial market participants, financial advisers and financial products. It primarily aims to improve sustainability-related disclosures and the comparability of the disclosures for end investors, as well as, to reduce the occurrence of adverse sustainability impacts and greenwashing.

In addition, on **6 April 2022**, the Commission adopted the [Delegated Act supplementing the SFDR with regard to Regulatory Technical Standards](#) specifying the details of the content and presentation of the information in relation to the principle of ‘do no significant harm’, as well as specifying the content, methodologies and presentation of information in relation to sustainability indicators and adverse sustainability impacts, and the content and presentation of the information in relation to the promotion of environmental or social characteristics and sustainable investment objectives in pre-contractual documents, on websites and in periodic reports. This is planned to apply on **1 January 2023**.

In respect of the above, reference is also to be made to the [Statement](#) issued by the European Supervisory Authorities (“ESAs”) on **2 June 2022** which provides clarifications on the ESAs’ draft RTS issued under SFDR, including the financial product disclosures under Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088, (the “**Taxonomy Regulation**”).

### **Amending Delegated Acts – MiFID II and IDD**

On 2 August 2021, various amending Delegated Acts have been published aiming to integrate sustainability issues and considerations into several EU legislative regimes, including Directive 2014/65/EU the Markets in Financial Instruments Directive (the “**MiFID II**”) and Directive (EU) 2016/974 (the “**IDD**”). The amendments carried out by means of the Delegated Acts, as outlined in sections 2 and 3 below:

- (a) are closely linked with each other and with the provisions of the SFDR, thereby establishing a comprehensive system of disclosure of sustainability aspects;
- (b) aim to clarify, amongst other matters, that:
  - (i) sustainability factors and sustainability-related objectives should be considered within the product governance requirements;
  - (ii) sustainability factors should be taken into account by investment firms, as well as by insurance undertakings and insurance intermediaries distributing insurance-based investment products (“**IBIPs**”), as part of their duties toward their clients.

## **2. Requirements Applicable to the Insurance Sector**

### **2.1 Commission Delegated Regulation (EU) 2021/1257**

[Commission Delegated Regulation \(EU\) 2021/1257](#) of 21 April 2021 amending Delegated Regulations (EU) 2017/2358 and (EU) 2017/2359 as regards the integration of sustainability factors, risks and preferences into the product oversight and governance requirements for insurance undertakings and insurance distributors and into the rules on conduct of business and investment advice for insurance-based investment products, shall be applicable as from **2 August 2022**.

The said Regulation (EU) 2021/1257 primarily aims to clarify the integration of sustainability risks and sustainability factors, in particular:

- (a) the integration of sustainability risks into the product oversight and governance requirements and into the rules on conflicts of interest; and
- (b) the integration of sustainability factors in the suitability assessment in the context of IBIPs distribution, thereby ensuring that appropriate consideration to sustainability factors is made in the selection process.

It modifies the following two Regulations, as follows:

**(a) Amendments to Commission Delegated Regulation (EU) 2017/2358**

Commission Delegated Regulation (EU) 2017/2358 supplements the IDD by further specifying product oversight and governance requirements for insurance undertakings and insurance distributors.

Commission Delegated Regulation (EU) 2021/1257 amends relevant provisions of Commission Delegated Regulation (EU) 2017/2358 and aims to ensure, amongst other matters, that the sustainability profile and preferences of Clients belonging to the target market are considered in the product approval process and the product oversight and governance arrangements.

**(b) Amendments to Commission Delegated Regulation (EU) 2017/2359**

Commission Delegated Regulation (EU) 2017/2359 supplements the IDD by specifying information requirements and conduct of business rules applicable to the distribution of IBIPs.

Commission Delegated Regulation (EU) 2021/1257 modifies Commission Delegated Regulation (EU) 2017/2359 and aims to clarify, amongst other matters, that insurance undertakings and insurance intermediaries distributing IBIPs need to take into account possible conflicts of interest that may arise in relation to sustainability factors. Furthermore, when providing advice on IBIPs, insurance undertakings and insurance intermediaries need to carry out a mandatory assessment of sustainability preferences of their Clients, and shall then take these sustainability preferences into account in the selection process of the IBIPs that are offered to these Clients.

Summary of Amendments

The below table summarises the amendments made:

<b>Commission Delegated Regulation (EU) 2021/1257 of 21 April 2021 amending Commission Delegated Regulation (EU) 2017/2358 and Commission Delegated Regulation (EU) 2017/2359</b>	
<b>Recitals in CDR (EU) 2021/1257</b>	<b>Rulebook provisions</b>
Recital 5	New Guideline G.2.1
Recital 6 and 8	New Guideline G.2.16
Recital 10	New Guideline G.4.4.98
Recital 11	New Guideline G.4.4.99
Recital 12	New Guideline G.4.4.101
Recital 14	New Guideline G.4.4.100

<b>Amendments to Delegated Regulation (EU) 2017/2358</b>	<b>Rulebook provisions</b>
Article 4(3)(a)(i)	Amendment of R.2.118(a)(i)
Article 5(1)	Amendment of R.2.123
Article 5(2)	Amendment of R.2.124
Article 5(3)	Amendment of R.2.125
Article 5(4)	Amendment of R.2.14
Article 6(1)	Amendment of R.2.127 and R.2.128
Article 6(2)	Amendment of R.2.129
Article 7(1)	Amendment of R.2.131
Article 8(3)	Amendment of R.2.139
Article 10(2)	Amendment of R.2.149(c)
Article 11	Amendment of R.2.155
<b>Amendments to Delegated Regulation (EU) 2017/2359</b>	<b>Rulebook provisions</b>
Definition of 'sustainability preferences' and 'sustainability factors'	New definitions in Glossary to the Rules
Article 3(1)	Amendment of R.3.96
Article 9(2)(a)	Amendment of R.4.4.88(a)
Article 9(4)	Amendment of R.4.4.90
Article 9(6)	New provisions in R.4.4.92
Article 14(1)(b)(i)	Amendment of R.4.4.99(b)(i)
Article 14(4)	Amendment of R.4.4.103

### 3. Requirements Applicable to the Investments Sector

#### 3.1 Commission Delegated Directive (EU) 2021/1269

[Commission Delegated Directive \(EU\) 2021/1269](#) of 21 April 2021 amending Delegated Directive (EU) 2017/593 as regards the integration of sustainability factors into the product governance obligations shall be **applicable as from 22 November 2022**, and the provisions transposing the said Directive need to be transposed into national law by 21 August 2022.

In the amended Rulebook, footnotes are being inserted with respect to the relevant Rules and guidelines in the Rulebook implementing the said Directive in order to depict the fact that these will be applicable as from *22 November 2022*.

**Amendments to Delegated Directive (EU) 2017/593**

Commission Delegated Directive (EU) 2017/593 supplements MiFID II by further specifying, amongst other matters, product governance obligations.

Commission Delegated Directive (EU) 2021/1269 modifies Commission Delegated Directive (EU) 2017/593 and aims to clarify, amongst other matters, that sustainability preferences need to be taken into account in the product oversight and governance process. In addition, sustainability preferences are to be duly considered when specifying the type or types of client or clients for whose needs, characteristics and objectives the financial instrument is compatible with.

**3.2 Commission Delegated Regulation (EU) 2021/1253**

[Commission Delegated Regulation \(EU\) 2021/1253](#) of 21 April 2021 amending Delegated Regulation (EU) 2017/565 as regards the integration of sustainability factors, risks and preferences into certain organisational requirements and operating conditions for investment firms, shall be applicable as from **2 August 2022**.

**Amendments to Delegated Regulation (EU) 2017/565**

Commission Delegated Regulation (EU) 2017/565 supplements MiFID II by further specifying organisational requirements and operating conditions for investment firms.

Commission Delegated Regulation (EU) 2021/1253 modifies Commission Delegated Regulation (EU) 2017/565 and aims to integrate sustainability factors in the suitability assessment carried out by investment firms providing investment advice and portfolio management. It aims to clarify, amongst other matters, that investment firms providing investment advice and portfolio management shall carry out a mandatory assessment of sustainability preferences of their clients. The said amendments also aim to ensure that investment firms appropriately take these sustainability preferences into account in the selection process of the products offered to clients.

**Summary of Amendments**

The below table summarises the amendments made:

<b>Commission Delegated Directive (EU) 2021/1269 of 21 April 2021 amending Delegated Directive (EU) 2017/593</b>	
<b>Recitals in CDD (EU) 2021/1269</b>	<b>Rulebook provisions</b>
Recital 5	New Guideline G.2.1
Recital 6 and 8	New Guideline G.2.7

<b>Amendments to Delegated Directive (EU) 2017/593</b>	<b>Rulebook provisions</b>
Definition "Sustainability Factors"	New definition in Glossary to the Rules
Article 9(9), 1st subparagraph of CDD (EU) 2017/593	Amendment of R.2.28
Article 9(11) of CDD (EU) 2017/593	Amendment of R.2.41(b)
Article 9(13), 2 <sup>nd</sup> subparagraph, of CDD (EU) 2017/593	New provision in R.2.43
Article 9(14) of CDD (EU) 2017/593	Amendment of R.2.15
Article 10(2), 1 <sup>st</sup> subparagraph, of CDD (EU) 2017/593	Amendment of R.2.101
Article 10(5) of CDD (EU) 2017/593	Amendment of R.2.103
<b>Commission Delegated Regulation (EU) 2021/1253 of 21 April 2021 amending Delegated Regulation (EU) 2017/565</b>	
<b>Recitals in CDR (EU) 2021/1253</b>	<b>Rulebook provisions</b>
Recital 4	New Guideline G.4.4.21
Recital 5	New Guideline G.4.4.63
Recital 6	New Guideline G.4.4.69
Recital 8	New Guideline G.4.4.68
<b>Amendments to Delegated Regulation (EU) 2017/565</b>	<b>Rulebook provisions</b>
Definition 'Sustainability Preferences' and 'Sustainability Factors'	New definition in Glossary to the Rules
Article 33 of CDR (EU) 2017/565	Amendment of R.3.21
Article 52(3) of CDR (EU) 2017/565	Amendment of R.4.3.15(c)
Article 54(2)(a) of CDR (EU) 2017/565	Amendment of R.4.4.39(a)
Article 54(5) of CDR (EU) 2017/565	Amendment of R.4.4.28(c) and (e)
Article 54(9) of CDR (EU) 2017/565	Amendment of R.4.4.33
Article 54(10) of CDR (EU) 2017/565	New provisions in R.4.4.43
Art 54(12), 1st subparagraph of CDR (EU) 2017/565	Amendments to R.4.4.46(c)
Art 54(13), new subparagraph of CDR (EU) 2017/565	Amendments to R.4.4.50

#### 4. Way Forward

Licence holders are to take the necessary steps to ensure compliance and enhance their operational preparedness in complying with all the Amending Delegated Acts referred to in sections 2 and 3 of this Circular, which are being implemented within Conduct Rulebook.

In so far as compliance with the SFDR legal framework is concerned, reference needs to be made to the updated joint [Supervisory Statement](#) on the application of the SFDR, issued by the ESAs on **24 March 2022**, which also provides guidance on timelines.

Moreover, the MFSA has been communicating its expectations with respect to the SFDR legal framework as well as the amending Delegated Acts by means of various Circulars. Reference is in particular to be made to:

- [Annex \(SFDR Requirements and Applicability\)](#) to the **MFSA Circular of 30 July 2021** on the application on the SFDR and Request for Information on operational and compliance readiness by Financial Market Participants and Financial Advisers; and
- [MFSA Report of 12 April 2022](#) on Operational and Compliance Readiness by Financial Market Participants and Financial Advisers.

#### **ESMA Guidelines on Certain Aspects of the MiFID II Suitability Requirements**

On 2 February 2022, the MFSA issued a [Circular](#) in relation to [ESMA's Consultation](#) on Guidelines on Certain Aspects of the MiFID II Suitability Requirements, highlighting the fact that entities are expected to take into consideration sustainability factors of investment products as part of their policies and procedures. The purpose of ESMA's Consultation was to update and revise the current ESMA Guidelines, in particular due to the amendments to MiFID II relating to sustainability pursuant to Commission Delegated regulation (EU) 2021/1253 as referred to in section 3.2 above. It is expected that ESMA will publish a final report and the final guidelines in the coming weeks.

#### **EIOPA Guidelines**

On 18 April 2022, the MFSA issued a [Circular](#) in relation to [EIOPA's Consultation](#) on Draft Guidelines integrating the customer's sustainability preferences in the suitability assessment as required under the IDD. The said document set out for Consultation the draft EIOPA Guidelines on the integration of sustainability in the advice process under the IDD.

On 20 July 2022, EIOPA issued its [Feedback Statement](#) on the said Consultation whereby it is noted that, due to feedback received EIOPA paused its work on issuing Guidelines under Article 16 of Regulation (EU) No 1094/2010 (as initially proposed) and instead focused on providing guidance.

The objective of the [guidance on the integration of customer's sustainability preferences in the suitability assessment under IDD](#) issued on 20 July 2022 is primarily to provide indications on how to assess the customer's sustainability preferences and to promote a better understanding and facilitate a correct implementation of the new rules pursuant to Commission Delegated Regulation (EU) 2021/1257 coming into effect on 2 August 2022. The said guidance note is not binding and should not be considered as Guidelines within the meaning of Article 16. In addition, insurance undertakings and insurance intermediaries should not restrict themselves to the aspects covered only in the said guidance.

## **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).