

4 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 carried out to the Rulebook are the following:

Requirements Applicable to the Investments Sector

1. ESMA Guidelines on certain aspects of the MiFID II appropriateness and execution-only requirements

On 3 January 2022, the European Securities and Markets Authority (ESMA) published the final report in relation to new [Guidelines on certain aspects of the MIFID II Appropriateness and Execution-only requirements](#). The MiFID II appropriateness and execution-only framework¹ is an important element of investor protection in the case of the provision of services other than investment advice or portfolio management (that is, non-advised services). These ESMA Guidelines will apply six months after the publication on ESMA’s website in all official EU languages, that is, as from 12 October, 2022.

The objectives of these new Guidelines are primarily to enhance clarity and ensure a harmonised approach in the understanding and application of various areas of the appropriateness assessment and execution-only requirements (set out mainly in Chapter 4 on Sales Process and Selling Practices of the Rulebook), thereby ensuring a consistent level of investor protection.

The said Guidelines cover several important aspects of the appropriateness assessment, such as, information to be provided to clients about the purpose of the assessment, the arrangements necessary to collect information and understand clients and products, matching of clients with appropriate products and the effectiveness of warnings issued to clients; as well as clarification of other requirements, mainly the execution-only exemption, the record-keeping requirements and necessary controls.

¹ In so far as the appropriateness assessment, the framework is primarily set out in Article 25(3) of MIFID II Directive and Articles 55 and 56 of MIFID II Delegated Regulation. In so far as the “execution-only exemption” the framework is mainly set out in Article 25(4) of MiFID II Directive and Article 57 of MiFID II Delegated Regulation.

The requirements relating to the suitability assessment and the appropriateness assessment share some commonalities, in particular relating to the collection of information about the client's knowledge and experience and its assessment against the investment product or service in question. It is to be noted that the ESMA Guidelines on certain aspects of the MiFID II suitability requirements have been taken as a starting point in developing these new Guidelines relating to the appropriateness assessment and execution-only framework; and that the differences between the suitability and appropriateness assessments have been taken into account.

The said new Guidelines apply to investment firms and credit institutions providing investment services and activities and to investment firms and credit institutions when selling structured deposits. Thus, amendments have been carried out to the Rulebook in order to implement the provisions of the said new Guidelines which shall apply to persons falling under points (i), (ii) and (v) of the definition of 'Regulated Person' in the Glossary when providing non-advised services. The relevant requirements have been included by means of **a new paragraph in Rule R.4.4.57** and a **new Appendix 6 to Chapter 4** of the Rulebook.

2. Amendments to the Requirements related to the Submission of Conduct-Related Data

As explained in [MFSA Circular of 16 November 2021](#), specific requirements were inserted in the Rulebook to expressly reflect the submissions to MFSA of conduct-related reporting which investment firms have been complying with based on relevant MFSA Circulars which had been issued in this respect.

A **new proviso to Rule R.4.1.25(a)** is being inserted to clarify that a Regulated Person with a different financial year **end** from 31 December, shall submit the MiFID Firms Quarterly Reporting 42 days following the end of the reporting quarter, according to its financial year end.

3. Other Amendments to the Rulebook

R.4.2.22 of the Rulebook has been amended so that, in accordance with Article 71(2) of the MIFID II Implementing Regulation (Commission Delegated Regulation (EU) 2017/565), reference is made to R.4.2.14 of the Rulebook, the latter transposing the second subparagraph of Article 30(2) of MIFID II.

In addition, **R.4.2.23** of the Rulebook has been amended to clarify that, in cases referred to in R.4.2.22 where a per se Eligible Counterparty requests a higher level of protection, the Regulated Person shall inform the said Eligible counterparty that as a result of such request it would be benefiting from certain protections.

Summary of Amendments

The below table summarises the amendments made:

Amendment of Rule R.4.4.57 New Appendix 6 to Chapter 4 of the Rulebook	Implementation of new ESMA Guidelines on certain aspects of the MiFID II Appropriateness and Execution-only Requirements.
Amendment of Rule R.4.1.25	New proviso to R.4.1.25(a) to clarify reporting deadline.
Amendment of Rules R.4.2.22 and R.4.2.23	Some amendments have been carried out to the said Rules as described in section 3 above of this Circular.

Requirements Applicable to the Investments and Insurance Sector

4. The Pan-European Personal Pension Product (PEPP)

On 26 March 2021, the MFSa issued a [Circular on the implementation of Regulation \(EU\) 2019/1238 on a pan-European Personal Pension Product \(PEPP\)](#) and issued a Survey with the aim of gauging the interest of the market in the PEPP.

[Regulation \(EU\) 2019/1238 of the European Parliament and of the Council of 20 June 2019 on a pan-European Personal Pension Product \(PEPP\)](#), (the “**PEPP Regulation**”) was published in the EU Official Journal on 25 July 2019, and has become applicable as from **22 March 2022**.

The development of a Pan-European Personal Pension Product (“PEPP”) aims to contribute to increasing choices for retirement saving, especially for mobile workers, and establish a Union market for PEPP providers. However, it is only considered to be complementary to the public pension systems. The PEPP Regulation lays down uniform rules on the registration, provision, distribution and supervision of personal pension products that are distributed in the Union under the designation of a PEPP.

The purpose of the PEPP Regulation, which is directly applicable, is to establish a more harmonised European market for this individual retirement savings products, the PEPP, which is a regulated, non-compulsory individual supplementary pension product that is characterised by high-portability within the European Union.

The said Regulation harmonises a set of core features for the PEPP, which concern key elements such as distribution, minimum content of contracts, investment policy, provider switching, or cross-border provision and portability.

The PEPP Regulation also sets out requirements on the distribution of the PEPP, the relevant pre-contractual information (primarily refers to the PEPP Key Information Document (“PEPP KID”)), as well as on the Information which needs to be provided to PEPP savers during the term of the contract (including, the PEPP Benefit Statement on an annual basis). The said Regulation also contains provisions on advice and demands and needs, cross-border provision and portability of the PEPP, switching and reporting to MFSA.

The contents of the PEPP Regulation should be read in conjunction with, *inter alia*:

- (a) the requirements set out in the Implementing and Regulatory Technical Standards, as well as Delegated Acts issued under the PEPP Regulation supplementing in further detail the requirements laid down in the said Regulation;
- (b) any relevant Guidelines issued by the European and Insurance Occupational Pensions Authority (“EIOPA”).

The PEPP Regulation is directly applicable, therefore, the purpose of the new Chapter 6 on Pan-European Personal Pension Product within the Rulebook is only to provide an overview of the relevant conduct requirements and make any relevant references to the new PEPP regulatory framework.

The Rules set out in the said Chapter are applicable to:

- (a) Regulated Persons which fall under point (i) and (iii) of the Regulated Person who are considered to be a “PEPP Provider” pursuant to Article 2 of the PEPP Regulation; and
- (b) Regulated Persons which fall under point (i), (ii), (iii) and (iv) of the definition of “Regulated Person” in the Glossary to these Rules, who are considered to be a “PEPP Distributor” pursuant to Article 2 of the PEPP Regulation.

Summary of Amendments

The below table summarises the amendments made:

<p>Insertion of a new Chapter 6 on Pan-European Personal Pension Product of the Rulebook.</p>	<p>The new Chapter contains relevant references to the new PEPP Regulation and relevant Technical Standards issued thereunder.</p>
---	--

Contacts

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