

19 October 2023

## 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:

### **1. Requirements Applicable to the Investments Sector**

The changes being carried out to the Conduct Rulebook relate to implementing all the necessary changes due to the following three (3) revised ESMA Guidelines in the context of the MiFID II framework. Various provisions in the main body of Chapters 2 to 4 of the Conduct Rulebook have been amended and/or shifted to three new Appendices which primarily implement the said Guidelines:

#### **(a) Revised ESMA Guidelines on certain aspects of MiFID II Remuneration Requirements**

On 31 March 2022, ESMA issued its Final report on the revised Guidelines on MiFID II Remuneration Requirements (*vide [MFSA Circular of 13 April 2022](#)*), which have become applicable as from 6 months from the date of publication of the said revised Guidelines on ESMA’s website in all EU Member States’ official languages (i.e. from 03/04/2023), that is, on *3 October 2023*. The 2013 Guidelines on the same subject-matter issued under MiFID I ceased to apply on the same date.

#### **(b) Revised ESMA Guidelines on certain aspects of MiFID II Suitability Requirements**

On 23 September 2022, ESMA issued the Final Report on the revised Guidelines on MiFID II Suitability Guidelines (*vide [MFSA Circular of 6 October 2022](#)*), which have become applicable as from 6 months from the date of publication of the said revised Guidelines on ESMA’s website in all EU Member States’ official languages (i.e. from 03/04/2023), that is, on *3 October 2023*. The 2018 ESMA Guidelines on the same subject-matter ceased to apply on the same date.

It is the sustainability-related amendments to the MiFID II Delegated Regulation (EU) 2017/565 which have mainly triggered the amendments to these ESMA guidelines.

As outlined in [MFSA Circular of 29 July 2022](#), changes were carried out to the Conduct Rulebook to implement the changes made by means of [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. The said amending Delegated Act primarily integrated sustainability issues and considerations within the product governance processes and has been applicable since *2 August 2022*. *Thus, Firms were expected to fully comply with the legal requirements as set out in the said Delegated Act as from the said date.*

### **(c) Revised ESMA Guidelines on MiFID II Product Governance Requirements**

On 27 March 2023, ESMA published its Final Report on Guidelines on the revised MiFID II Product Governance Guidelines (*vide* [MFSA Circular of 18 April 2023](#)), which have become applicable as from 2 months from the date of publication of the said revised Guidelines on ESMA's website in all EU Member States' official languages (i.e. from 03/08/2023), that is, on *3 October 2023*. The 2018 Guidelines on the same subject-matter ceased to apply on the same date.

It is the sustainability-related amendments to the MiFID II Delegated Directive (EU) 2017/565 which have mainly triggered the amendments to the ESMA guidelines. As outlined in [MFSA Circular of 29 July 2022](#), changes were carried out to the Conduct Rulebook to implement the changes made by means of [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. The said amending Delegated Act primarily integrated sustainability issues and considerations within the MiFID II suitability assessment and has been applicable since *22 November 2022*. *Thus, Firms were expected to fully comply with the legal requirements as set out in the said Delegated Act as from the said date.*

### **Summary of Amendments**

The below table only summarises the key amendments made:

Rule R.2.19 and new Appendix 1 to Chapter 2	Mainly implement revised ESMA Guidelines on MiFID Product Governance requirements
Rule R.3.33 and new Appendix 2 to Chapter 3	Mainly implement revised ESMA Guidelines on certain aspects of MiFID II Remuneration requirements
Rule R.4.4.16 and new Appendix 7 to Chapter 4	Mainly implement revised ESMA Guidelines on certain aspects of MiFID II Suitability requirements

## 2. Requirements Applicable to the Insurance Sector

For the purposes of enhancing consumer protection, a **new guideline G.1.2.6** is being inserted in Chapter 1 of the COBR to complement R.1.2.18 to clarify that the information relating to the Manufacturer and the Distributor of an insurance product should be clearly legible and not diminished, disguised or obscured in any way by the content, design or format of the information or advertisement.

In particular, in order to specifically address *“white labelling”* of insurance products, **a new disclaimer** is being required *via* the use of the following wording or such other wording as appropriate in particular circumstances:

*“This Product is manufactured by [name of the Manufacturer], which provides the cover under this policy, and is distributed by [name of the Distributor].”*

In the new guideline it is also clarified that the term *“white labelled insurance Products”* refers to insurance products which are manufactured by an entity, but which are marketed by another entity under the brand of such other entity (which other entity would normally be a Distributor; and which is not the Manufacturer or Co-Manufacturer of the Product in question), for example, by attaching the name of the distributing entity in the name of the Product.

### Summary of Amendments

The below table only summarises the key amendments made:

New guideline G.1.2.6	This complements Rule R.1.2.18, as well as provides for a new disclaimer and a definition of the term <i>“white labelled insurance Products”</i> .
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### **Contacts**

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