

05 April 2024

## Circular on Markets in Financial Instruments Directive ('MiFID II') and Markets in Financial Instruments Regulation ('MiFIR')

**Regulation (EU) 2024/791 (amending MiFIR) and Directive (EU) 2024/790 (amending MiFID II)**

and

**Publication of interpretative guidance by the European Commission – Transition for the application of the MiFID II/MiFIR review**

This circular is being addressed to all market participants falling within scope of MiFID II and MiFIR, particularly investment firms, credit institutions providing investment services and/or performing investment activities, market operators including any trading venues they operate and approved publication arrangements (APAs), as well as other stakeholder groups and associations accessing post-trade information.

This circular should be read in conjunction with [MiFID II](#) and [MiFIR](#), the relevant delegated and implementing regulations and previous circulars issued by the Authority, as the case may be.

### **Purpose of the Circular**

The Authority would like to inform market participants that, changes to MiFIR and MiFID II have been introduced by Regulation (EU) 2024/791 (the '[MiFIR Review](#)') and Directive (EU) 2024/790 (the '[MiFID II Review](#)') respectively.

The changes following the MiFIR Review have entered into force on 28 March 2024. On the other hand, EU member states are required to comply with the provisions of MiFID II Review by 29 September 2025.

The Authority would like to also inform market participants that, on 27 March 2024, the European Securities and Markets Authority ('ESMA') issued a [Public Statement](#) in relation to the application of certain provisions of MiFIR and MiFID II. This statement complements the [Communication Notice](#) on the transitional provision of the MiFIR Review issued by the European Commission on 27 March 2024.

## **MiFIR/MiFID II Review**

The Council of the EU adopted changes to the EU's trading rules, which will give investors a better access to the market data necessary to invest in financial instruments and increase global competitiveness of the EU's capital markets and ensure a level playing field.

The changes concern the MiFIR and MiFID, which together regulate investment services and financial markets activities in the EU, in order to empower investors by making consolidated market data easily accessible at EU level, by increasing transparency on capital markets, improving competitiveness and ensuring a level playing field.

These new rules include;

- The establishment of consolidated market data
- A general ban on 'payment for order flow'
- New rules on commodity derivatives

## **European Commission Interpretative Guidance**

The publication by the European Commission aims to provide guidance on the application of the MiFIR Review that entered into force on 28 March 2024, and to clarify the transitional arrangement set out in Article 54(3) of MiFIR, as amended following the MiFIR review.

As stated in the [European Commission Communication Notice](#), several provisions in the MiFIR review need to be supplemented by Commission delegated regulations to become fully operational. In order to ensure legal certainty for market participants on the regime applicable until these new Commission delegated regulations enter into application, the European Commission clarified that, pursuant to Article 54(3) MiFIR, the existing Commission delegated regulations, as applicable before 28 March 2024, will continue to apply.

In addition, ESMA complemented the European Commission Communication Notice and provided practical guidance on some key areas in order to contribute to the orderly transition and consistent application of MiFIR as amended by the MiFIR review. In particular, the statement provides further guidance on the new rules that need to be supplemented by delegated regulations and those rules that are "self-executing" and do not need to be supplemented by delegated regulations to be effective.

The statement covers the following areas:

- Volume cap (double/single);
- Equity transparency;
- Non-equity transparency;

- The systematic internaliser (SIs) regime;
- Designated publishing entities (DPEs); and
- Transaction Reporting.

## Next Steps

ESMA and the European Commission will proceed with developing delegated regulations thereby contributing to the alignment of the delegated acts with MiFID II/ MiFIR as amended by the MiFID II/MiFIR review as soon as possible.

In addition, ESMA declared that it may issue further and more detailed guidance on the topics covered in its statement at a later stage, if needed.

Lastly, ESMA is planning to establish a dedicated webspace tracking the development of draft Commission delegated regulations and clarifying which provisions are applicable to market participants at a given time.

## Contacts

Any queries or requests for clarifications on the contents of this Circular should be addressed to the Authority via email on [MarketInfrastructures@mfsa.mt](mailto:MarketInfrastructures@mfsa.mt).