

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

13 November 2018

Re: Circular on the revised Part BI of the Investment Services Rules for Investment Services Providers

Attn: Investment Services Licence Holders (Investment Firms)

Introduction

Reference is made to the Circular issued by the Malta Financial Services Authority ('MFSA' or 'the Authority') dated 18 December 2017 concerning the revised Part BI of the Investment Services Rules for Investment Services Providers applicable to MiFID Firms ("the Rules" or "the Rulebook").

As part of its ongoing work, the Authority has updated certain sections of the Rulebook. The relevant amendments to the Rules are outlined below.

1. Definitions

Chapter 1, Title 1, Section 3, Definitions has been expanded to include new definitions and to provide further clarity on existing definitions, notably: key function holder, management body, client assets, member and supervisory function.

2. Due Diligence Checks

Reference is made to the MFSA's [Circular](#) dated 25 July 2018, regarding the Joint ESMA and EBA Guidelines on the assessment of suitability of members of the management body and key function holders ("the Guidelines")¹.

The Guidelines came into force on **30 June 2018** and their aim is that of harmonising and improving suitability assessments of the members of the management body and where applicable, key function

¹ The joint EMSA and EBA Guidelines are available at: <https://www.esma.europa.eu/regulation-and-policy/internal-governance/joint-esma-and-eba-guidelines-on-the-assessment-of-the-suitability-of-members-of-the-management-body/-/regulatory-activity/press-release#>

holders (for the purpose of this Circular collectively referred to as “subject persons”) operating within EU financial sectors. This should improve governance arrangements within the set-ups of the relevant Licence Holders.

Investment Firms are required to undertake ongoing due diligence checks and assess the suitability of the members of the subject persons, as explained in Section 5 of Title 2 of Chapter 1 of Part B1 of the Rules.

Moreover, Licence Holders are required to submit to the Authority a confirmation, on an annual basis, that all the necessary ongoing due diligence checks have been carried out during the respective reporting period. The confirmation shall state whether the due diligence checks carried out on subject persons yielded adverse information and in that event, the Authority shall be provided with the relevant details identified from the due diligence checks conducted on the subject person(s). More importantly, if and when the Licence Holder identifies any material information emanating from the ongoing checks, which could impinge on the fit and proper status of members of subject persons, the Licence Holder is to inform the MFSA in writing immediately and provide the Authority with all the pertinent information on the subject person(s).

This confirmation is to be submitted to the Authority by not later than 31 January (or the following working day as applicable) of each calendar year and should be signed by at least one Director. The confirmation shall cover the assessment conducted in one calendar year starting from 01 January to 31 December. The first return shall cover the period ending 31 December 2018 and is to reach the Authority by 31 January 2019.

Licence Holders are also required to document and retain all relevant evidence or records of the due diligence checks and suitability assessment undertaken at the registered office of the Licence Holder. Such dossiers are to be made available to the MFSA on-site inspection team upon request.

Contact

Any queries regarding the above should be directed to the Securities and Market Supervision Unit for attention of the Investment Firms Team (e-mail: investmentfirms@mfsa.com.mt).

Communications Unit
Malta Financial Services Authority
13 November 2018