

# MFSA

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## MALTA FINANCIAL SERVICES AUTHORITY

### **Circular to the financial services industry on changes to Part A of the Investment Services Rules for Investment Services Providers**

1. Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 (the ‘Directive’)<sup>1</sup> established the legal framework for the prudential assessment of acquisitions by natural or legal persons of a qualifying holding in a credit institution, assurance, insurance or reinsurance undertaking or an investment firm. The Directive amended the European Directives applicable to credit institutions, investment firms, and insurance and reinsurance undertakings. In 2008 the former Level-3 Committees (CEBS, CESR and CEIOPS) developed non-binding guidelines for the prudential assessment of qualifying holdings (the ‘3L3 Guidelines’). Annex I to the Guidelines set out the recommended list of information which should be provided to the competent authorities in order to carry out their assessment.
2. A Report published by the European Commission in February 2013 highlighted some shortcomings in the 3L3 Guidelines, including a lack of harmonised definitions of key concepts such as that of ‘indirect qualifying holding’, ‘significant influence’ and ‘persons acting in concert’, resulting in different interpretations by competent authorities as to whether, under such circumstances, a proposed acquisition or increase of a qualifying holding has to be notified or not to the relevant competent authority.
3. On 20th December 2016 the Joint Committee to the European Supervisory Authorities (EBA, ESMA and EIOPA) published updated Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector (JC/GL/2016/01) hereafter referred to as the ‘2016 Guidelines’. The 2016 Guidelines harmonise key concepts, and list factors which competent authorities should take into account in their prudential assessment of acquisitions and increases of qualifying holdings. The 2016 Guidelines also give further guidance as to how the proportionality principle should be applied by the relevant competent authority in its prudential assessment of the proposed acquisition and the criteria to be applied by the competent authority in the assessment of the proposed acquirer. The 2016 Guidelines refer and are supplemented by Commission Delegated Regulation (EU) 2017/1946<sup>2</sup>, which has replaced the former Annex I to the Guidelines.

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<sup>1</sup> Directive 2014/65/EU on markets in financial instruments which repeals the Directive contains provisions of the Directive in relation to acquisitions.

<sup>2</sup> Commission Delegated Regulation 2017/1946 of 11 July 2017 supplementing Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for an exhaustive list of information to be included by proposed acquirers in the notification of a proposed acquisition of a qualifying holding in an investment firm.

4. The MFSA has amended Section 13 of Part A of the Investment Services Rules for Investment Services Providers ('Rules') in order to bring them in line with the 2016 Guidelines. Commission Delegated Regulation (EU) 2017/1946 applies and includes an exhaustive list of information to be included by proposed acquirers in the notification of a proposed acquisition of a qualifying holding in an investment services providers.

### **Contacts**

Any queries or requests for clarifications in respect of the above should be sent to Dr. Emaliese Lofaro by email on [elofaro@mfsa.com.mt](mailto:elofaro@mfsa.com.mt).

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