
CIRCULAR TO THE FINANCIAL SERVICES INDUSTRY IN RELATION TO THE TRANSPOSITION OF MiFID II

- **Introduction**

Section B of Annex I of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments [‘MiFID II’] lists the following as “ancillary activities” to the main business of investment services licence holders:

- (1) Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management and excluding maintaining securities accounts at the top tier level;
- (2) Granting credits or loans to an investor to allow him to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction;
- (3) Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings;
- (4) Foreign exchange services where there are connected to the provision of investment services;
- (5) Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments;
- (6) Services relating to underwriting;
- (7) Investment services and activities as well as ancillary services of the type included under Section A or B of Annex I related to the underlying of the derivatives included under points (5), (6), (7) and (10) of Section C where these are connected to the provision of investment or ancillary services.

The purpose of this circular is to inform the industry on the approach which the Authority will be adopting in relation to these activities.

- **‘Ancillary Activities vis-à-vis the Investment Services Act**

The Authority will transpose the provisions of Section B of Annex I of MiFID II in the Investment Services Act [‘Act’]. Therefore, once the revised Act comes into force, these activities will be considered as licensable activities.

The Authority considers an activity to be ‘*ancillary*’ if it is subordinate to the main activity. The provision of the activity must be temporary in nature and must not be such as to lead to a situation where the licenced entity will not be able to carry out the core activity in the absence of the ancillary activity.

- **Proposed way forward**

The Authority will be proceeding as follows:

- (i) New Applications

With effect from **1st March 2017**, new applicants will be required to indicate in the application form whether they intend to provide any ancillary activities. In this regard, Schedule A1 to Part A of the Investment Services Rules for Investment Services Providers will be revised shortly to make reference to ancillary activities;

- (ii) Applications under review

Applicants which have submitted an application for authorisation as MiFID Firm and whose application is currently being considered by the Authority will be required to disclose any ancillary activities in due course.

- (iii) Investment Services Licence Holders

Investment Services Licence Holders are requested to provide the Authority with information in relation to whether they are providing any ancillary activities and to indicate which ancillary activities are being provided. This information shall be communicated to the Authority via e-mail on mifid2@mfsa.com.mt to the attention of the Director – Authorisation Unit.

In the case where no ancillary activities are being provided by the Licence Holder, relevant negative statement to that effect should still be submitted.

Replies should be sent in by not later than **28th April 2017**.

Licence Holders are to note that, once the revised Act comes into force, licenced entities providing ancillary activities which have not been disclosed to the Authority will be considered to be in breach of the Act and may be subject to regulatory action.

- **Queries**

Any queries or requests for clarifications are to be sent by e-mail to mifid2@mfsa.com.mt

**Communications Unit
Malta Financial Services Authority
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