

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Amendments to the Guidance Notes to the Investment Services Rules for Investment Services Providers

23rd November 2007

1.0 Background

Reference is made to the Guidance Notes to the Investment Service Rules for Investment Services Providers (hereinafter “the Guidance Notes”) issued by the MFSA on the 1st November 2007.

In the light of a number of requests from Licence Holders, for further clarifications with respect to certain areas, MFSA deems it appropriate to:

- a) expand **Section 2[B]** of the Guidance Notes, relating to Client Profile Requirements, to include a new Section **2[B.2a]** providing further guidance as to when a transaction may be deemed to be carried out at the “initiative of the client” for the purposes of **SLC 2.25(b)**.
- b) clarify, **in point [iv] of Section 2[G.2]** of the Guidance Notes, relating to Complaints Handling, that the Licence Holder which is in receipt of a complaint from its client, should notify such client that s(he) may refer the complaint to the MFSA if s(he) is not satisfied with the manner in which the Licence Holder handled the complaint.

2.0 Amendments to Section 2[B]: Client Profile Requirements

A new section **2 [B.2a]** and entitled ‘*Provision of Services ‘At the Initiative of the Client’*’ will be included after section **2 [B.2]**. This new section aims to provide further guidance as to whether a transaction may be considered to be carried out ‘at the initiative of the client’ with particular reference to the two tests established for this purpose in **Recital 30** of the Markets in Financial Instruments Directive (hereinafter “MIFID”).

Moreover, the footnote which is currently included in point [iv](b) of Section 2 [B.2] has been deleted since its contents have been included in this new section.

The new guidance, *inter alia*, includes a matrix illustrating the application of the above two tests to various communications issued by Licence Holders to clients or potential clients. However, Licence Holders should note that **in referring to this**

matrix and seeking to apply it in practice, they should take into account the particular circumstances of the scenario they are faced with in light of contents of the Guidance Note. The matrix contained in the Guidance Note should only serve as a rough guide and does not remove the need for Licence Holders to exercise their own judgment.

3.0 Amendments to Section 2[G] – Complaints Handling:

In order to better reflect the wording of **SLC 2.117**, the third paragraph in **point [v] of Section 2[G.2]** of the Guidance Notes has been amended to read as follows:

“In the same letter inform the complainant that s(he) may refer the complaint to the MFSA’s Consumer Complaints Unit if s(he) is not satisfied with the manner in which the complaint has been handled by the Licence Holder.”

A revised version of the Guidance Notes is available on the Authority’s website by selecting ‘Securities/Investment Services/Rules for Investment Services Providers and Related Guidance Notes’.

4.0 Contacts

Should you have any queries with respect to the above, please do not hesitate to contact:

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