

**MFSA**

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MALTA FINANCIAL SERVICES AUTHORITY

# **CONSULTATION DOCUMENT**

**[MFSA REF.: 02-2017]**

**CLOSING DATE: 16/03/2017**

**Consultation with the financial services industry with regards to a number  
of Legal Notices transposing MiFID II**

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### **1. Introduction**

On the 15 January 2016 and the 3 May 2016, the Malta Financial Services Authority, issued circulars to the industry as follows:

- 1) Circular to the financial services industry on the changes being proposed to the Financial Markets Act (FMA) as a result of the transposition of MiFID II and the implementation of MiFIR
- 2) Circular to the financial services industry on the changes being proposed to the Investment Services Act (ISA) as a result of the transposition of MiFID II and the implementation of MiFIR

The MFSA is now conducting a consultation process in order to seek the financial industry's comments and suggestions with regards to a number of draft Legal Notices (LNs) intended to be issued under the Financial Markets Act (FMA) and the Investment Services Act (ISA). The draft LNs are annexed to this consultation paper. It is emphasized that the drafts annexed are not final and therefore subject to change.

### **2. Legal Notices to be issued under the FMA**

It is being proposed that the following Legal Notices will be issued under the FMA:

- Regulated Markets (Authorisation Requirements) (Amendment) Regulations
- Financial Markets Act (Membership and Access) (Amendment) Regulations
- European Rights for Regulated Markets (Amendment) Regulations
- Financial Markets Act (SME Growth Markets) Regulations
- Financial Markets Act (MiFID and MiFIR Administrative Penalties, Measures and Investigatory Powers) Regulations
- Financial Markets Act (Off-Market Deals) (Revocation) Regulations
- Financial Markets Act (Transparency) (Revocation) Regulations

### **3. Legal Notices to be issued under the ISA**

It is being proposed that the following Legal Notices will be issued under the ISA:

- Investment Services Act (Exemption) (Amendment) Regulations
- European Passport Rights for Investment Firms (Amendment) Regulations
- Investment Services Act (Control of Assets) (Amendment) Regulations
- European Passport Rights for Persons Operating Multilateral Trading Facilities or Organized Trading Facilities Regulations
- Investment Services Act (Alternative Investment Fund Manager) (Passport) (Amendment) Regulations
- Investment Services Act (Tied Agents) Regulations - These proposed Regulations will replace the current Investment Services Act (Tied Agents) Regulations. Essentially, the new Regulations will transpose the new requirements relating to tied agents under Article 29 of MIFID II. The main changes relate to the fact that the establishment of a tied agents regime is now compulsory in all Member States, as opposed to the situation under MIFID 1 where the establishment of such a regime was optional. With respect to the discretion granted to Member States in Article 29(2), the MFSA has retained its position of not allowing tied agents to hold and control clients' money.

#### **4. Legal Notices to be issued under both the FMA and the ISA**

It is being proposed that the following Legal Notices will be issued under both the FMA and the ISA:

- Central Counterparties Access Regulations
- Position Limits and Position Management Controls in Commodity Derivatives and Reporting Regulations
- Data Reporting Services Regulations
- Algorithmic Trading Regulations
- Multilateral Trading Facilities and Organised Trading Facilities Regulations

#### **5. Legal Notices to be issued under the FMA, ISA, MFSA Act and Banking Act**

It is being proposed that the following Legal Notice is issued under the FMA, ISA, the MFSA Act and the Banking Act:

- Markets in Financial Instruments Regulations - These Regulations implement into Maltese law the provisions of the MIFIR Regulation, which does not require transposition, being directly applicable.

### 6. Legal Notice to be issued under the ISA and the Banking Act

It is being proposed that the following Legal Notice is issued under the ISA and the Banking Act:

- MiFID and MiFIR Administrative Penalties, Measures and Investigatory Powers Regulations

### 7. Third Country Firms

MiFID grants Member States discretion as to whether to impose certain requirements vis-à-vis third country firms. Article 39, for example, clearly states that “*A Member State **may** require...*” [Emphasis added]. The draft Legal Notice, entitled Investment Services Act (Provision of Investment Services and Activities by Third Country Firms) Regulations, 2016, which proposes to take up this option, is also attached to this consultation document. Once again it is emphasised that the draft LNs are not finalised and are subject to change.

### 8. Replies

Comments and replies with respect to the above and/or the attached drafts can be sent by e-mail on [MiFIDConsultation@mfsa.com.mt](mailto:MiFIDConsultation@mfsa.com.mt) by not later than **16 March 2017**.

**Communications Unit**  
**Malta Financial Services Authority**  
**16 February, 2017**  
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