

22 August 2019

## Update to Part BI: Rules applicable to Investment Services Licence Holders which qualify as MiFID Firms (“the Rules”)

### 1. Introduction

As part of its ongoing work, the Authority has updated certain sections of the Rules. This circular will be addressing three sections:

1. The first section ties in with a Circular issued by the MFSA on [14 February 2019](#) relating to CRR Local Firms (“Local Firms”), and states which parts of the Rules such Firms have to adhere to;
2. The second section deals with the requirements for Investment Services Firms distributing or intending to distribute contracts for differences (“CFDs”) and/or rolling spot forex contracts and/or carry out binary options trading. These relate to the two separate Policies issued on [30 July 2015](#) and [on 03 April 2017](#); and
3. The third and final section outlines miscellaneous changes to the Rules.

Further to the above listed changes to the Rules, Part A of the Investment Services Rules for Investment Services Providers has also been revised. In this regard, reference should be made to Section 4 and the inclusion of Sections 14 and 15 of the latter Rules. Moreover, following the release of the “Guidelines on the application of C6 and C7 of Annex I of MiFID II” issued by ESMA in June 2019, R1-1.4 of Part A has also been revised.

### 2. Local Firms

The Title of each Chapter of the Rules stipulates the *Scope and Application*. Local Firms have to adhere to the Rules where reference is made to “All Licence Holders” or “Category 3 Licence Holders”. That said, Local Firms may benefit from certain exemptions from the Rules and said exemptions are explicitly stated in the relevant Rules.

We are outlining hereunder the Chapters applicable to Local Firms.

#### a) Chapter 1 of the Rules – General

The definition of Local Firms has been introduced in the Rules in point 56 of Rule R1-1.3.1 of Section 3 - Definitions of Title 1 - Introduction.

Moreover, Sections 2, 4, and 5 of Title 2 - General Obligations, in relation to the Ongoing Obligations, Fees, and Due Diligence Requirements, respectively, are also applicable to Local Firms.

b) Chapter 2 of the Rules – Prudential Requirements

The Initial Capital applicable to Local Firms is €50,000, as indicated in Chapter 2 of the Rules, R2-1.2.3 and the relevant Table R2.1 – Initial Capital in Euro (EUR).

c) Chapter 3 of the Rules – Organisational Requirements

Section 2 – General Principles, of Title 1 – Governance, shall apply in full.

Section 3 – Governance Arrangements, of Title 1 – Governance, shall partially apply as indicated therein.

Section 2 – Policies and Procedures, of Title 2 – Risk Management, shall apply in full.

Title 3 – Compliance, shall apply in full.

The following Sections falling under Title 5 – Other Organisational Requirements shall apply in full:

- Section 2 – Internal Audit;
- Section 5 – Business Continuity Process;
- Section 6 – Recovery and Resolution Requirements;
- Section 7 – Outsourcing Requirements;
- Section 9 – Synchronisation of Business Clocks; and
- Section 10 - Procedures for Reporting of Breaches.

d) Chapter 4 of the Rules – Record Keeping, Reporting and Disclosure Requirements

Title 1 – Notifications and Approvals Requirements shall apply in full.

Section 2 - Record Keeping and Section 4 – Accounting Records of Title 2 – Record Keeping and Accounting Records, shall apply in full.

Title 3 – Audit shall apply in full.

The following Sections falling under Title 5 – Reporting Requirements applicable to Category 2 and Category 3 Licence Holders, shall be applied as indicated in the Rules:

- Section 2 – General;
- Section 3 – Audited Annual Reporting Requirements;
- Section 5 – Interim COREP Return;
- Section 7 – High Income Earners Confirmation;
- Section 8 – Due Diligence Annual Reporting;

- Section 9 – Recovery and Resolutions Plan; and
- Section 10 – System Certification.

Title 6 – Reporting Requirements applicable to Licence Holders forming part of a Consolidated Group, shall apply in full.

e) Chapter 6 – Enforcement and Sanctions

Local Firms are to adhere to this Chapter in full.

3. *Investment Services Firms distributing or intending to distribute contracts for differences (CFDs) and/or rolling spot forex contracts and/or carry out binary options trading*

The term “*Binary Option*” has been introduced in Section 3 – Definitions of Title 1 – Introduction of Chapter 1.

As per the requirements of Chapter 2 of the Rules, R2-1.2.3 and the relevant Table R2.1 – Initial Capital in Euro (EUR), Licence Holders authorised to distribute contracts for differences (CFDs) and/or rolling spot forex contracts under the MiFID regime and hold a Category 2 Licence are required to hold an initial capital of €730,000.

As laid down in Chapter 4 of the Rules, Rule R4-1.2.1(xxi), the Licence Holder shall notify the MFSA in writing of changes to counterparties/ liquidity providers where the Investment Services Firm offers contracts for differences (CFDs) and/or rolling spot forex contracts and/or carry out binary options trading.

Rule R4-2.2.14 of Chapter 4, introduces new Record Keeping requirements applicable to the above Firms. In addition, reference should be made to Section 10 – System Certifications of Title 5 - Reporting Requirements applicable to Category 2 and Category 3 Licence Holders of Chapter 4, in relation to the required independent IT Auditor’s confirmation certifying the adequacy of the systems in place.

4. *Miscellaneous*

a) Capital Requirements

The MFSA has effected a change in nomenclature to be consistent with Regulation (EU) No 575/2013 of the European Parliament and of the Council, the Capital Requirements Regulation (“the CRR”). “*Capital Requirements*” is now being used instead of “*Capital Resources Requirements*”. This is merely a change in name and there are no other changes in the Rules themselves.

In addition, Category 2 and Category 3 Licence Holders are reminded that the Capital Requirements constitute of the: (i) Initial Capital Requirement, and (ii) Own Funds Requirement, applicable to Investment Services Licence Holders as stipulated in Rules R2-3.2.1a and R2-3.2.1b.

b) Contractual Agreements governing Capital Instruments

With the introduction of Rule R4-1.3.1(iii) of Chapter 4, the Licence Holder shall obtain the written consent of the MFSA prior to entering into contractual agreements governing capital instruments which meet the conditions laid down in Rules R2-2.3.1.1.2.2(i), R2-2.3.1.1.3.2(i), or R2-2.3.1.2.3(i).

c) Other Regulatory Reporting Requirements

For the sake of clarity and with reference to Rule R4-5.7.1 in relation to “*High Income Earners Confirmation*” of Chapter 4, if no individuals within the Licence Holder earn at least EUR 1million a ‘Nil’ return should still be submitted.

Further clarity regarding Rule R4-6.2.1, “*Consolidated Group Confirmation*” of Chapter 4, has been provided. Licence Holders shall submit, by not later than the end of one month from the respective accounting reference date, a detailed explanation in writing as to whether it forms, or does not form part, of a Consolidated Group. In addition and as required by Rule R4-6.3.1, the Automated Annual Consolidated COREP Return (“ACCR”) must now be submitted only as a soft copy through the LH Portal.

Credit Institutions holding an Investment Services Licence are exempted from Title 6 – Reporting Requirements applicable to Licence Holders forming part of a Consolidated Group of Chapter 4.

5. *Conclusion*

Any queries regarding the Part B1 Rules should be directed to the Securities and Market Supervision function for attention of the Investment Firms Team ([investmentfirms@mfsa.com.mt](mailto:investmentfirms@mfsa.com.mt)), whereas, any queries relating to the Part A Rules should be addressed to Authorisation Function ([ausecurities@mfsa.com.mt](mailto:ausecurities@mfsa.com.mt)).