

INVESTMENT SERVICES RULES FOR INVESTMENT SERVICES PROVIDERS

PART B: STANDARD LICENCE CONDITIONS

Appendix 7 Record Keeping

1.0 Introduction

- 1.1 SLC 2.83 of Part B of these Rules requires the Licence Holder to keep records of all services and transactions undertaken by it which shall enable MFSA to monitor compliance with the requirements of the Rules, and in particular to ascertain that the Licence Holder has complied with all obligations with respect to clients or potential clients.

As required by Article 51(3) of Commission Directive 2006/73/EC (“the Implementing Directive”) MFSA is drawing up the following list of minimum records which Licence Holders are required to keep in complying with the requirements of these Rules.

In drawing up this list, MFSA has referred to the Level 3 Recommendations¹ issued by the Committee of European Securities Regulators (‘CESR’). However, it is important to note that this list:

- a. is without prejudice to other record keeping requirements arising from other legislation;
 - b. does not refer to any of the policies that Licence Holders need to maintain in order to comply with these Rules (e.g. policies relating to risk management, complaints handling and best execution). However, MFSA expects that all such policies should be in writing and
 - c. should not be understood as a limitation of the scope of these Rules. Accordingly, compliance with the list does not provide Licence Holders with a safe-harbour from the record – keeping requirements in these Rules.
- 1.2 MFSA may, from time to time, add to the list recommended by CESR, additional reporting requirements which it deems appropriate in the local scenario.

¹ CESR level 3 Recommendations on the List of Minimum Records in Article 51(3) of the MiFID Implementing Directive. CESR/07-085.

2.0 List of Minimum Records to be kept by Licence Holders:

Type of record	Indicative Contents of Record	Indicative time at which record be created
Categorisation and identity of each client	The identity of each client and sufficient information to support categorisation as a retail client, professional client and/or eligible counterparty.	When the client relationship begins or upon re-categorisation, including as a result of any review.
Client agreement	Records provided for under SLCs 2.38 and 2.39.	Before providing services to a new client for the first time.
Client details	The information about the client's or potential client's knowledge and experience, financial situation and investment objectives, relevant to the specific product or service, obtained by the Licence Holder in complying with its obligation under SLC 2.16.	On giving advice or being appointed as a portfolio manager.
Client details	The information about the client's or potential client's knowledge and experience, relevant to the specific product or service, obtained by the Licence Holder in complying with its obligation under SLC 2.21.	Upon providing the relevant service.
Records required (SLC 2.83)	The information required under SLC 2.83.	Such records should be kept for the period required by SLC 2.83.

Type of record	Indicative Contents of Record	Indicative time at which record be created
Aggregated transaction that includes two or more client orders, or one or more client orders and an own account order. (SLC 2.77 – 2.78)	Identity of each client; whether transaction is in whole or in part of discretionary managed investment portfolio and any relevant proportions as well as the intended basis of allocation.	On executing an aggregated transaction and before the transaction is executed when the intended basis of allocation is contemplated.
Allocation of an aggregated transaction that includes the execution of a client order (SLC 2.77 – 2.78)	The date and time of allocation; relevant financial instrument; identity of each client and the amount allocated to each client.	Date on which the order is allocated.
Re-allocation	The basis and reason for any re-allocation.	At the time of the re-allocation.
Order received or arising or decision to deal taken in providing the service of portfolio management	The records provided for under Art. 7 of the Regulation (EC) 1287/2006. Licence Holders may wish to consider the date and hour that the order was sent by the Licence Holder for execution.	Immediately after receipt of the order or after the decision taken.
Orders executed on behalf of clients	Records provided for under SLC 2.74 (a).	At the time of the execution of the order.
Transmission effected for own account	The records provided for under Article 8(1) of the Regulation (EC) 1287/2006.	Immediately after the order or transaction is carried out.
Transmission of order received by the Licence Holder	The records provided for under Article 7 and Article 8(2) of the Regulation (EC) 1287/2006.	Immediately after receipt of the order and immediately after receiving the confirmation that

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Type of record	Indicative Contents of Record	Indicative time at which record be created
		an order has been executed.
Periodic statements to clients	Information to evidence the content and the sending of the periodic statement sent to the client in respect of services provided, either as a copy, or in a manner that would enable reconstruction.	On date on which it is provided.
Client financial instruments held by a Licence Holder	The records required under Parts 2 and 3 of the Investment Services Act (Control of Assets) Regulations, 1998.	On commencement of the holding.
Client financial instruments available for, and subject to, stock lending activities	The identity of client financial instruments that are available to be lent, and those which have been lent (note also the requirements of the Control of Assets Regulations and SLC 2.93).	On such assets being made available for lending and on such assets being lent.
Client funds	Sufficient records to show and explain a Licence Holder's transactions and commitments under Article 8 of Regulation 1287/2006 [note also the requirements under Parts 2 and 3 of the Control of Assets Regulations and under SLC 2.86 (a) and (b)].	As soon as monies received and paid out.
Marketing communications (except in oral forms)	Each marketing communication addressed by the Licence Holder to retail clients or potential retail	At the time the Licence Holder first issues the marketing communication.

Type of record	Indicative Contents of Record	Indicative time at which record be created
	clients.	
Investment research	Each item of investment research, in accordance with SLC 2.109 issued by the Licence Holder in writing.	At the time the Licence Holder first issues the item of investment research.
The Licence Holder's business and internal organisation	Records provided for under SLC 1.17.	On the business and organisation being established or amended.
(Essential) Compliance Procedures	The Licence Holder's essential compliance procedures, under SLC 1.20 to 1.22.	On the policies and procedures being established or amended. (In respect of each version, the period in SLC 2.84 shall commence on the date on which the relevant version is amended).
Services or activities giving rise to detrimental conflict of interest	The services or activities under SLC 2.101.	At the time the conflict of interest is identified.
Compliance reports	Each compliance report to senior management, under SLC 1.26.	At time of the relevant report.
Risk management reports	Each Risk management report to senior management under SLC 1.24.	At time of the relevant report.
Internal audit reports	Each internal audit report to senior management, under SLC 1.28(d).	At the time of the relevant report.

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Type of record	Indicative Contents of Record	Indicative time at which record be created
Complaints records	Each complaint referred to in SLC 2.117 received.	On receipt of complaint.
Complaints handling	The measures taken for the resolution of each such complaint, according to SLC 2.117.	As measures are taken.
Records of prices quoted by systematic internalisers	The quoted prices under Art. Art. 24 para 1b of the Regulation (EC) 1287/2006.	As prices are quoted.
Records of personal transactions	The information required under SLC 2.103.	As notifications of personal transactions are received by the Licence Holder or when the Licence Holder identifies them.
Record of the information to be disclosed to clients regarding inducements	The information to be disclosed to clients under SLC 2.02.	As the information is disclosed.
Investment advice	i. The fact that investment advice was rendered. ii. The financial instrument recommended.	Upon providing investment advice.
Execution only Transactions	Evidence of the notification required in terms of SLC 2.25(c) that the client being provided with an execution only service will not benefit from the protection of certain Conduct of Business Rules since the Licence Holder is not required to carry out an appropriateness test.	Upon making said notification.

Type of record	Indicative Contents of Record	Indicative time at which record be created
<p>Disclosures required to be made by persons promoting and selling² investment products in terms of SLC 2.119.</p>	<p>i. The fact that the persons promoting and selling the investment products are only in a position to offer information on one or a limited range of products.</p> <p>ii. That the information provided does not constitute investment advice.</p> <p>iii. That should the clients require advice they will be referred to an authorised advisor.</p> <p>This disclosure should be countersigned by the client</p>	<p>Upon promoting and selling an investment product to a client or prospective client.</p>

² The activity of “*promotion and sale*” of investment products is described in the Investment Services Rules as the practice whereby Licence Holders’ staff explain the features of a particular product to a client or prospective client without actually providing investment advice with respect to that product, such that it is the client who ultimately decides for himself/herself whether to invest in the particular product or not.