MFSA MALTA FINANCIAL SERVICES AUTHORITY

Feedback Document

Feedback Statement on the Consultation for the Conduct of Business Rulebook for Credit Institutions Offering Retail Products and Services

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Contents

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Introduction

On 19 February 2024, the Malta Financial Services Authority ('MFSA' or 'the Authority') published a consultation on the proposed Conduct of Business rules for enhanced protection of Consumers in the provision of Banking Products and Services by Credit Institutions. Such proposed rules have been gathered under a Draft Rulebook for Credit Institutions offering Retail Products and Services ('the Rulebook').

The Consultation sought feedback from the banking industry on the draft chapters of the Conduct of Business Rulebook for Credit Institutions, comprising of the following: (1) Disclosures; (2) Marketing Rules; (3) Product Oversight Requirements; (4) Conflicts of Interest; and (5) Bank-Client Relationships.

A number of feedback submissions have been received, both from individual credit institutions and a comprehensive collective industry submission through the Malta Bankers' Association ('MBA'). The Authority wishes to thank all participants for their valid and detailed feedback, all of which was noted and carefully considered. In this regard, the Authority has made several changes to the proposed Rulebook, with the salient changes being covered by this Feedback Statement.

This Feedback Statement is indeed drawn up to summarise the updates, revisions and clarifications the Authority wishes to point out based on the proposed Conduct of Business Rulebook, organised under the various key headings of the said Rulebook. Such changes to the Rulebook required a change in the rule / guidance number referencing for most of the provisions. For the purposes of this Feedback Statement, reference is made to the original rule / guidance number referencing found in the initial draft version of the Rulebook issued for consultation, upon which the industry had provided its feedback.

This earlier version of the Rulebook can be accessed by following this link, which varies from the final version of the Rulebook issued by the Authority following such consultation. The updated rule / guidance number referencing found in the final version of the Rulebook shall be quoted in any future interactions going forward.

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Feedback on the Main Topics of the Rulebook

Glossary of Definitions

Industry Feedback Received

The Industry replied with feedback on a number of terms and their respective definitions as used and applied throughout the proposed Rulebook. These are listed below with the Industry's point/s of contention with the initially proposed definitions.

Client – The Industry contested the definition of Client whereby it was suggested that Client should refer to a natural person acting outside his trade or business, instead of sole traders and Micro-Businesses.

Credit Agreement – The Industry suggested that there seems to be an overlap when using the terms 'Consumer Credit Agreements' and 'Credit Agreements relating to Residential Immovable Property'.

Credit Facility – The Industry requested further clarification on the definition of a Credit Facility and its applicability throughout the Rulebook.

Compliance Officer – The Industry requested further clarification on the definition of the Compliance Officer and its applicability throughout the Rulebook.

Dormant Account – The Industry commented positively about having a definition for dormant accounts but highlighted the fact that this requires Regulated Persons to adapt their internal reporting requirements, necessitates system changes and amendments to current bank policies and procedures and interaction with customers. Hence, there should be a robust transitional period – of a least six months - for the adoption of the principle laid down in this definition.

Payment Account – The Industry requested the Authority to confirm whether a bank that does not offer cash services is exempt and suggested that the reference to Payment Account should be removed from para (a) and (b) as they result in self-referral to the same definition.

Payment Account with Basic Features – The Industry commented on the fact that under the EU's Payment Accounts Directive, only payment transactions within the Union are captured, while in the draft Rulebook reference is made to 'Malta' instead. The Industry suggested that this would be rephrased accordingly.

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Relevant Persons – The Industry would like to clarify whether the term Relevant Persons refers to officers and/or managers.

MFSA Position

The Authority is highlighting below some of the key feedback points received on specific definitions of terms used within the Rulebook. Following deliberation based on the feedback received, the Authority would like to clarify the following on the respective terms:

- Client: The term 'Client' has been restricted to refer to a natural person making use of Retail Products who is acting for purposes of his/her personal accord, including instances whereby he/she is carrying out a business venture, trade or profession under his/her own personal name.

- Credit Agreement: Credit Agreements are redefined to encompass all types of agreements falling within the scope of this Rulebook including Consumer Credit Agreements, Credit Agreements for Residential Immovable Property and business loans granted to sole traders.

- Credit Facility: The term 'Credit Facility' has been replaced by 'Credit Agreement' throughout the rules and guidance covered by the Rulebook and has therefore been removed from the glossary of definitions.

- Compliance Officer: In line with Section 25 of Banking Rule BR/24, Credit Institutions shall appoint a person under the title of the Compliance Officer or Head of Compliance who would be responsible for the Compliance Function across the entire Credit Institution. Although the Credit Institution can allocate certain individuals to carry out tasks covered by the Rulebook, it would be under the direction and responsibility of the Compliance Officer who bears the responsibility for the Compliance Function and is required to sign off all regulatory documentation. The definition of Compliance Officer has been updated to this effect.

- Dormant Account: The definition of a dormant account has been refined and now reads as follows: "A Payment Account or Deposit Account in relation to which there has been no transaction, neither deposits nor withdrawals having been posted within the previous consecutive twenty-four (24) months. Any payments directly credited into or debited from the account arising from other sources (that is not from the account itself) shall not render the account dormant for the purpose of this Rulebook.

  For avoidance of doubt, the term "other sources" refers to deposits and withdrawals not generated from the accounts itself, such as for instance fees related to other financial products like card feed and bank guarantee fees; direct debits for subscriptions, receipt of dividends and interest from term deposits and bonds."

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- Management Body: The term 'Management Body' has been replaced by 'Board of Directors' throughout the rules and guidance covered by the Rulebook and has therefore been removed from the glossary of definitions.

- Payment Account: Given that the definition of 'Payment Account' emanates from the existing Payment Accounts Regulations, the Authority resolved to maintain the definition of this term as is.

- Payment Account with basic features: Given that the definition of 'Payment Account with basic features' emanates from the existing Payment Accounts Regulations, the Authority resolved to maintain the definition of this term as is. Furthermore, the Authority would like to clarify that the definition also refers to services provided by Maltese licensed Credit Institutions that offer services on a cross-border basis.

- Relevant Persons: By way of clarification, the current definition of 'Relevant Persons' explicitly refers to managers of the Regulated Person as being Relevant Persons under point (a) of the definition.

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Chapter 1 – Disclosures

Durable Medium

Industry Feedback Received

The Industry wanted to clarify why Durable medium is necessarily paper. The importance given to the use of paper is not aligned with best ESG principles.

MFSA Position

The concept of 'Durable Medium' has been revisited to emphasise that it is not limited to paper-based communications. To dispel the misconception that paper is the default option for a Durable Medium, reference to the electronic format pursuant to R.1.1.3 has been introduced in part (a) of R.1.1.2. This integration aligns the Rulebook with the approach taken by MiFID, which considers electronic means for the provision of information to be the default, while still offering Clients the option to opt-in for paper communications if they prefer.

Furthermore, the provisions of R.1.1.3(b) acknowledge that a website can be considered a Durable Medium provided that it meets the minimum requirements set forth in R.1.1.17.

Product Risk & Right of Withdrawal

Industry Feedback Received

The Industry commented that Deposits are very different from instruments and that there are too many requirements nominally aimed to 'protect' consumers when in actual fact a deposit carries significantly much less risk than if one had to invest an equivalent amount in an instrument.

Furthermore, on the right of withdrawal, the Industry raised its concern that if Clients break their terms deposit accounts prior to maturity, this might have repercussions from a prudential perspective through the impact on a bank's liquidity position.

MFSA Position

Through G.1.1.3, the Rulebook mandates clear disclosure of the risks associated with Retail Products. While the Authority appreciates that product risk in the case of Retail Products is limited when compared to other investment products, there is still an element of inherent product risk that needs to be disclosed to the Client for consumer protection. For example,

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term deposit products can create liquidity risk for the Client. Such a risk needs to be disclosed accordingly, as also prescribed by EBA issued guidance.

With respect to R.1.1.10 on the right of withdrawal, the rule states that Regulated Persons must disclose all information to the Client at inception stage, even when the Client has a right of withdrawal or cancellation. Therefore, even if the Client has a right of withdrawal or cancellation, Regulated Persons are not exonerated from providing full information to the Client at inception stage that would enable the Client to make an informed purchasing decision.

Other Considerations

The following lists out specific responses being made by the Authority to address feedback received on various rules within Chapter 1.

Industry Feedback Received

- A specific industry player portrayed their disagreement to the introduction of R.1.1.21 and that its content should remain solely in the remit of the Regulated Person since web formats are claimed that they do not have any bearing on causing any potential risk to Clients.

MFSA Position

- R.1.1.21 is a general rule stating that digital information should be presented in a clear way, without the user having to click on further links to open further webpages or need to download separate files. The rule specifically states: "not solely dependent on", indicating that while it is acceptable to provide supplementary information via downloads, the primary characteristics such as fees and charges, must be readily visible without any extra steps.

Industry Feedback Received

- The industry commented on the fact that R.1.1.26 to R.1.1.28 state that publication of all interest rates applicable must be updated as soon as any interest rate change comes into effect. However, the industry continues that these same rules then suggest that interest rates need to be published beforehand together with the date from when the changes will apply and was therefore requesting clarification from the Authority.

MFSA Position

- In terms of R.1.1.26 to R.1.1.28, the requirement is that interest rates should always be made available on the Regulated Persons' websites and that any changes to these

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interest rates should be communicated to the Clients beforehand, through a notice period, before the revised interest rates are enforced. The Authority agrees that quoted interest rates should always be the applicable interest rates at that point in time and an indication of the date when the changes in interest will apply must be given. Conversely, in terms of R.1.1.18(g), the Rule stipulates that updates to digital information reflecting these changes need only be made once the change is in effect, which is after the notification period has expired.

Industry Feedback Received

- The industry pointed out its disagreement with the insertion of R.1.1.40 to R.1.1.43, suggesting that especially points (b) and (c) of R.1.1.40 and R.1.1.41 in general are deemed unreasonable. Specifically on R.1.1.42, the industry commented that the expiration of the promotional interest rate would have been specified a priori. With respect to R.1.1.43, the industry queried that if the customer does not want the yearly statement, are Regulated Persons meant to introduce a means by which to suppress it?

MFSA Position

- The Rulebook clarifies that for special savings rates offered for a limited period, Rule R.1.1.42 remains applicable, however amendments have been made to R.1.1.40 and R.1.1.41 in line with industry feedback. Furthermore, the method of notification for these special rate offers can be through electronic means.

- R.1.1.43 has been retained as is under the premise that regular statements are not typically accessible directly through banks' public websites. Instead, they are made available through secure internet banking portals covered under another Durable Medium. Moreover, Clients are to be provided with an annual statement. This requirement would ensure that Clients have the necessary documentation to reconcile their source of funds with their account activity over the year.

Industry Feedback Received

- With respect to R.1.1.46 to R.1.1.49, the industry required further information as to what fees and charges the MFSA is referring to. It was remarked that these rules make sense in the context of investment services but do not really make sense in the context of retail banking products.

MFSA Position

- R.1.1.46 to R.1.1.49 under the proposed Rulebook have been removed on the basis that disclosure requirements of such information is already disclosed in the Standard European Consumer Credit Information (SECCI) Form, the European Standardised

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Information Sheet (ESIS) and the Fee Information Document, included as annexes to Chapter 1 of the Rulebook.

Industry Feedback Received

- An industry player requested clarification from the Authority with respect to the treatment of staff loans when staff members resign and what would be the MFSA's expectation in relation to the 60-day notice regarding the change in borrowing rate.

MFSA Position

- Rule R.1.2.108 addresses a generic scenario involving changes to the borrowing rates on loans. One is to keep in mind that when a loan is approved for a staff member (and such loans are granted at a preferential rate) it is disclosed upfront that, should the staff member resign, the interest rate on their loan will be adjusted to reflect the commercial rates applicable at the time of resignation, without the need for prior notification. Upon submission of the resignation letter, the staff member is to be informed of the new rate and repayment amount as soon as possible.

Industry Feedback Received

- The industry enquired about Section 3 of Chapter 1 and whether this is replacing the disclosure requirements set out in the Consumer Credit Directive.

MFSA Position

- The Authority would like to confirm that, as noted in the introduction of the Consultation Document, the proposed Rulebook aims at consolidating the applicable requirements from the following three Directives: the Mortgage Credit Directive, the Consumer Credit Directive and the Payment Accounts Directive. In fact, more specifically, the requirements under Section 3 of Chapter 1 emanate from the Consumer Credit Regulations.

Industry Feedback Received

- The industry requested clarification around the applicability of R.1.3.116 with respect to credit intermediaries established abroad that offer credits to residents outside of Malta and whether these should be regulated by the Rulebook or otherwise.

MFSA Position

- The Authority would like to confirm that R.1.3.116 under the proposed Rulebook is transposing Regulation 5(2) of the Consumer Credit Regulations. Furthermore, the Authority wishes to clarify that Credit Intermediaries offering credit products of a

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Regulated Person authorised by the MFSA are to be monitored by the Regulated Person themselves and in line with the requirements of the proposed Rulebook.

Industry Feedback Received

- The industry requested clarification on whether the reference to the timing of the provision of information emanating from R.1.4.163 and R.1.4.168 should be "in good time" as per R.1.4.160 or upon request.

MFSA Position

- With reference to R.1.4.163 and R.1.4.168, the Authority would like to clarify that "in good time" refers to before the conclusion of the contract so that the Client still has the possibility to consider alternative options, whereas "upon request" refers to when the Client has already entered into a Bank-Client relationship during the lifetime of the product service delivery and the Client requests a copy of the respective document.

Industry Feedback Received

- The industry requested clarification on the requirement emanating from R.1.4.182 and whether the Authority will be involved in the complaints process on the premise that Clients are being requested to contact the Authority in case of refusals for Payment Accounts with basic features.

MFSA Position

- R.1.4.182 states that the Client "has the possibility to contact the MFSA" from a conduct perspective. However, the Authority will not undertake the investigation of specific cases and hence why the Rule continues with requirement that the Regulated Person must inform the Client about his "right to lodge a complaint with the Office of the Arbiter for Financial Services" and "the procedure for submitting a complaint" to the Regulated Person against the refusal of an application for a Payment Account with basic features.

Industry Feedback Received

- In terms of R.1.4.183, the industry commented that this appears to be a new requirement which does not seem to reflect the requirements imposed in the existing Payment Accounts Directive. This appears to be a new, onerous requirement in that it requires banks to disclose the average number of days it shall take to generate a working account number for the Client, to issue a debit card, to enable internet banking facilities and to provide an authorised overdraft agreement as part of the Client's application to open the account.

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MFSA Position

- The Authority would like to clarify that the purpose of R.1.4.183 is to serve as an indication to Clients by having Regulated Persons providing an average number of days they will take to complete each of the stated actions, while also serving as a benchmark for Regulated Persons to monitor their own performance. The Rule has been amended to cater for the proviso that such time commences provided that the Client would have provided all relevant information.

Industry Feedback Received

- The industry requested clarification on the merits of and any links between the requirements emanating from R.1.4.184 and R.1.4.218. Similarly, for R.1.5.222, the industry commented that new rules put in place for savings and deposit accounts which do not undertake day-to-day payment transactions is assumed to relate to term deposits. The industry commented that this should not apply where the service is provided to customers that are resident abroad and that the rules do not distinguish on which entity website should such information is to be made available.

MFSA Position

- In terms of R.1.4.184 and R.1.4.218, the MFSA would like to emphasise that these are mutual obligations, and that other foreign National Competent Authorities are obliged to enforce these obligations on credit institutions licenced in their respective territory, since these obligations emanate from the Payment Accounts Directive (2014/92/EU).

- With respect to R.1.5.222, in the case of Regulated Persons being authorised and regulated in Malta, information is to be provided on the Regulated Person's website, irrespective of where their Clients reside.

Industry Feedback Received

- The industry commented on a number of rules within Section 5 of Chapter 1. More specifically, in terms of R.1.5.231, the industry remarked that the term "fixed term savings account" is misleading. Furthermore, the industry raised the point that issuing a statement on a fixed term deposit is not as meaningful given that the balance of the account does not change throughout the period and all transactions are shown in the savings accounts. The industry wanted to emphasise that interest on these accounts does not change, and all the relevant information would be available to Clients on the contract note. The bank also sends a notification to Clients informing them of the account maturing date, which makes the requirement for a statement, in the industry's opinion, obsolete.

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MFSA Position

- The Authority would like to clarify that within Section 5 to Chapter 1, it has resolved to carry out the following amendments:
  1. the term "fixed term savings account" within R.1.5.231 has been replaced with the term "Fixed Term Deposit Account" to more accurately describe the product in question;
  2. the fact that R.1.5.231 does not apply where the maturity date of the fixed term deposit account is less than 90 days has been added; and
  3. R.1.5.226, R.1.5.227, R1.5.1.228, R.1.5.232 and R.1.5.233 have been removed.

Chapter 2 – Marketing Rules

Applicability

Industry Feedback Received

- A generic comment received from the industry was that listed credit institutions are already subject to advertising standards included in the Bye-Laws of the Malta Stock Exchange and that the rules within this Chapter would cause an additional regulatory burden for such industry players.

MFSA Position

- While the Authority acknowledges this, it considers that given that not all credit institutions are listed on the Malta Stock Exchange, the rules emanating from this Chapter need to be complied with by all credit institutions licensed by the MFSA in order to ensure consumer protection and a more level playing field.

- The Authority would like to clarify that as specified in the introduction to this Chapter, although these rules are without prejudice to the advertising standards as may be included in the Bye-Laws of the Malta Stock Exchange applicable to Regulated Persons listed on the Malta Stock Exchange, the Rules in this Chapter will eventually supersede the current Banking Notice BN/05.

Interest Rates and local offerings within Advertisements

Industry Feedback Received

- The industry commented on the fact that rules on advertisements would require interest rates to be described appropriately in advertisements taking into consideration the option for withholding tax at source (as per R.2.5.72). It was required from the MFSA to

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clarify whether such a requirement is intended to apply only to local offerings. The industry elaborated that extending the same concept to all products wherever offered within the EU would mean that credit institutions must carry out an assessment of whether equivalent regimes apply, which means that Regulated Persons have to go beyond offering banking services.

MFSA Position

- R 2.1.1 clearly states that unless otherwise stated, the rules set out in Chapter 2 shall apply to:
  a. any Advertisement, Marketing material or information issued in or from Malta by the Regulated Person; and
  b. any Advertisement, Marketing material or information which is circulated, published, broadcast or otherwise received in Malta.

  Hence, unless stated in the Rulebook, such rules apply to Retail Products issued by Regulated Persons authorised and regulated by the MFSA whereby their advertisements are published and intended to be received by persons resident in Malta.

  Furthermore, with respect to interest rates, the Authority wishes to clarify that R.2.5.72 suggests a number of options from which the Regulated Person may choose from to indicate the rate of interest. To further clarify its position, the Authority has amended R.2.5.72 to read that such terms listed within the said rule "should preferably be used as applicable".

Publication of different advertising types

Industry Feedback Received

- The industry commented on the fact that technical benchmarks should be clarified and subdivided as per different forms of advertising, for example billboards, banners, etc.

MFSA Position

- To this effect, the Authority would like to clarify that the regulatory text in any advert should be in a suitable font size depending on the advertising medium being used to ensure readability in all different variations. The font size of text regarding regulatory disclaimers should, as a bare minimum, be not smaller than the size of the rest of the text within the advert.

Industry Feedback Received

- The industry remarked that the Authority should offer additional guidance on the disclosure requirements for using marketing tools like web banners and Google Ads,

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which are inherently limited in space. It should specify the minimum information that must be included in such advertisements and whether directing customers to a website containing the necessary disclosures would be sufficient.

MFSA Position

- To this effect, the Authority introduced a new rule, without prejudice to R.2.1.7, requiring that where the advertisement is limited by time or space, it must include at least the Regulated Person's Licencing statement and must direct Clients to an easily accessible alternative source where all the necessary disclosures are prominently displayed. Where the said advertisement is of a digital nature, the necessary disclosures should be displayed no further than one click away from the advertisement itself.

Identification of the Target Market and misleading information

Industry Feedback Received

- The industry queried on the inclusion of reference to the identified target market within the remits of the Rulebook. It brought forward that by law, banks are authorised to take deposits and issue loans without any qualification and therefore requested that any reference to an Identified Target Market should be omitted from the Rulebook.

- Furthermore, the industry asked the Authority to clarify by way of examples, situations where an advertisement or information might be considered misleading.

MFSA Position

- In response to industry feedback, the Authority would like to clarify that the identification of the Target Market emanates from a requirement under the Product Oversight and Governance ('POG') guidelines issued by the European Banking Authority ('EBA'). By requesting the identification of such Target Market, the Rulebook is establishing a direct link to the requirements under POG.

  For example, in the case of term deposits, the identified target market for this product would be Clients who do not have urgent need for cash within the duration of the term. In view of this, R.2.1.5 has been converted into a guideline and amended to read that the Regulated Person is to ensure that an advertisement or information is being aimed at the target market identified for the retail product or service in question.

- Following the Industry's requests for examples of instances where advertisements or information might be considered misleading, these could include but not limited to:

  (a) advertisements stating that the advertised product is the only product offered on the market when it is not the case;

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(b) instances where only favourable features are given disproportionate prominence; or
(c) a reference to an endorsement of the credit institution and/or its products by a third party, which is not factually correct.

The role of the Compliance Officer

Industry Feedback Received

- The industry queried on the role of the Compliance Officer and the remits of the Compliance Officer's approval powers and involvement in the Regulated Person's operational procedures.

MFSA Position

- In addition to the Authority's clarification of the role of the Compliance Officer in view of the revised definition of the term to be applied throughout the Rulebook, in line with the proposed R.2.1.11, the Compliance Officer is the person within the Regulated Person who is responsible that the institution abides by its regulatory obligations. This includes the obligation of the Compliance Officer to notify the MFSA with instances where the Regulated Person has not acted in line with the applicable requirements of the Rulebook if this comes to the Compliance Officer's attention.

  Accordingly, it is the responsibility of the Compliance Officer to ensure that an advert proposed to be issued by the Regulated Person is in line with the applicable requirements contained in the Rulebook. Indeed, the Compliance Officer is also expected to report to the Authority if the Regulated Person issues an advert without his/her approval and should be the person providing the ultimate approval for the issuance of the advertisement. This does not preclude the fact that there might be other staff members (with sufficient seniority and expertise) involved in the Regulated Person's internal procedures to review and assess whether the intended advert is in line with the applicable rules, but it should be the Compliance Officer who bears the responsibility.

  In cases where the content has been translated to a different language, the Compliance Officer is expected to ensure that the meaning within the translation remains consistent with that of the approved content, but there is no need for the Compliance Officer to also approve the translations.

  Similarly, in the case of advertising templates, whilst it is possible for Regulated Persons to create internal templates to be used for different products and different advertisements, it is important for the Compliance Officer to ensure that:
  1. the templates are approved to meet the minimum requirements of the rules laid down in the Rulebook;
  2. the template used is deemed appropriate for the specific advert being issued; and
  3. the correct templates have been used and followed in the final issue of the advert.

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With respect to the form of the Compliance Officer's approval, direct email approval from the Compliance Officer or his delegate, would suffice as long as it is recorded and saved appropriately.

Where, in terms of Banking Rule BR/24, a Compliance Officer is not appointed and another person assumes such a function, any reference to and obligation by the Compliance Officer referred to in the Rulebook shall apply to this such other person.

Furthermore, Rule R.2.1.11 states that when issuing or approving advertisements, Regulated Persons shall appoint the Compliance Officer to approve advertisements to be issued by the Regulated Person in its own name. In order to clarify further the role of the Compliance Officer in this context, the following two new provisos have been inserted:

> "Provided that, in order to ensure timely and effective compliance, the Compliance Officer may delegate the responsibilities set out in this Rule to other person/s within the Compliance Function who are considered to possess sufficient seniority and expertise.
>
> Provided further that, in such a case, the Compliance Officer shall retain ultimate responsibility for the decisions taken pursuant to the requirements of this Rule."

Other Considerations

Industry Feedback Received

- The industry commented on the fact that start and end dates of advertisements within the remit of R.2.1.11 are difficult to define and monitor.

MFSA Position

- In rule R.2.1.11(c)(iv), the start and end dates of the advertisement is meant to understand the start and end dates of the advertising campaign, which is usually known by the Regulated Person through the Regulated Person's budgetary control.

Industry Feedback Received

- The industry queried on the definition of the term "complexity" within the remits of the Rulebook, considering that this Rulebook deals with plain-vanilla deposits and other banking Retail Products.

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MFSA Position

- Rule R.2.1.21(d) has been removed in view of the fact that banking Retail Products covered by this Rulebook are not generally complex.

Industry Feedback Received

- The industry raised practical concerns in interpreting and implementing Rule R.2.1.23.

MFSA Position

- Rules R.2.1.23 and G.2.1.6 have been deleted following further consideration in view of the fact that these are not directly attributable to banking Retail Products.

Industry Feedback Received

- The industry pointed out that it is highly unlikely that in terms of rules R.2.1.27 and R.2.1.28 and their corresponding guidance G.2.1.8 and G.2.1.9, the money deposited will be lost due to the fact that such deposits up to EUR 100,000 are covered by the Depositors Compensation Scheme and therefore to be redrafted.

MFSA Position

- R.2.1.27 and G.2.1.8 have been amended to clarify that the element of forfeiture is relating to the amount of any interest due, not the capital amount invested.

Industry Feedback Received

- The industry requested clarification on the definition of the term “high-cost short-term”.

MFSA Position

- The term “high-cost short-term Credit Agreement” within R.2.1.30 applies to Credit Agreements that attract a high interest together with high fees for short durations, which will result in a very high Annual Percentage Rate (‘APR’) such as for example, pay-day loans.

Industry Feedback Received

- The industry requested clarification on what is understood by the term “electronic form”.

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MFSA Position

- With respect to the electronic form or medium of an Advertisement, this would include any mode through the use of the internet, including websites, social media and other online advertising channels such as Graphic Interchange Formats ('GIFs').

Chapter 3 – Product Oversight Requirements

Applicability

Industry Feedback Received

- The industry raised concerns on the relevance of the requirements emanating from Chapter 3 of the Rulebook within the setting of banking Retail Products with an element of potential gold plating.

- In view of the Chapter 3 requirements, the industry once again raised its reservations on the concept of the identified target market within the remit of banking retail products, stating that such requirements are too onerous in being applied in relation to such plain vanilla banking products such as term, savings and current accounts.

MFSA Position

- Amendments have been carried out so that Chapter 3 primarily contains requirements emanating from EBA Guidelines on product governance (and related EBA Reports), EBA Guidelines on internal governance and requirements emanating from the Mortgage Credit Directive. To this effect, the following rule has been included to clarify:

  The Regulated Person shall comply with all the product governance requirements laid down in this Chapter, and shall also ensure effective compliance in accordance with the principles and expectations emanating from:
  a. the 2015 EBA Final Report on Guidelines on product oversight and governance arrangements for retail banking products (EBA/GL/2015/18);
  b. the 2019 First EBA Report on the Application of the Guidelines on Product Oversight and Governance (POG) Arrangements; and
  c. the 2020 Second EBA Implementation Report on the Application of the said Guidelines (EBA/REP/2020/28).

- The identification of the Target Market does not replace the sales process involving the individual Client. During the process with the individual Client, the Regulated Person will request the necessary information from the Client with respect to the Retail Product or service provided.

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Industry Feedback Received

- The industry also commented on the fact that the Rulebook introduces the obligation to act honestly, fairly and professionally in accordance with the best interests of its Clients, and to act with utmost good faith. It suggests that these principles exist within the investment services, MiFID and insurance sectors, however it fails to understand how these principles can be applied in practice within the retail banking sector with specific reference to rules such as R.3.1.5.

MFSA Position

As entities licensed by the Authority, the principle that such Regulated Persons should act fairly, honestly and in accordance with the best interest of their clients should apply, irrespective of the sector in which the licenced holder operates.

Industry Feedback Received

- The industry sought clarification on instances where the Regulated Person provides facilities to customers in line with the Malta Development Bank schemes. The industry queried on whether the Regulated Person would be considered as the Distributor or both the Manufacturer and Distributor in such instances.

- Furthermore, the industry requested clarification on the definition of Distributor as proposed in the draft Rulebook. More specifically, whether this includes introducers and brokers who solely present financial products to potential consumers without directly engaging in the sales process, such as price comparison website owners that are very often based in jurisdictions other than Malta and bringing together services from multiple jurisdictions.

MFSA Position

- If the Regulated Person is manufacturing Retail Products in line with Malta Development Bank ('MDB') schemes, such that the product is owned by the Regulated Person, then it is to be considered that the Regulated Person is both a Manufacturer and a Distributor for such products.

- To this effect, requirements for Distributors are specifically about POG arrangements as applicable to the activity of sales (i.e. the distribution) to Clients. The definition of Distributor in the Rulebook reflects the definition found in the EBA POG Guidelines and refers to a Distributor being "a Regulated Person or Credit Intermediary who offers and/or sells the Retail Product to Clients; this includes business units of Regulated Persons that are not involved in the designing of the product but are responsible for bringing the product to the market."

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In the case of companies owning price comparison websites with the aim of introducing potential customers to a range of retail products from a number of credit institutions, if such entities do not fall within the definition of a Credit Intermediary, then it would not satisfy the definition of Distributor.

General Considerations

Industry Feedback Received

- The industry brought forward its feedback on the fact that expectations being placed upon the Compliance Function, are at times contradictory. On one hand, the Compliance Function is charged with detailed and continuous oversight and the entitlement to intervene and effectuate changes at every stage of the product design process, which seemingly positions it within the operational sphere of the PGOP. On the other hand, the Compliance Function is advised to maintain an independent position to preserve the integrity of its oversight capabilities. The industry of the opinion that a number of provisions in the draft Rulebook appear to blur the lines between the first and second lines of defence within institutions.

MFSA Position

- The proposed rules of R.3.3.24 and R.3.5.35 have been removed in view of the requirements not being directly attributable to banking Retail Products covered by the Rulebook. Furthermore, pursuant to Guideline 2 of the EBA POG Guidelines, POG arrangements are an integral part of the Manufacturer's governance, risk management and internal control framework and responsibilities must sit with Senior Management. Moreover, the oversight of the process is to be integrated within the typical Risk and Compliance Functions.

  For instance, in R.3.10.71 and R.3.10.72, Senior Management, with support from representatives of the Manufacturer's Compliance and Risk management functions, shall be responsible for continued internal compliance with the Product Governance and Oversight Policy ('PGOP') and shall periodically check that it is still appropriate. In addition, the responsibilities for the oversight of this process by the Risk Control function and the Compliance Function should be integrated into their normal line of duties.

  In EBA's 2019 Report, EBA considers it good practice for the Regulated Person to have defined structures and clear escalation lines and for the Risk and Compliance Functions to be involved with some decision-making power. However, EBA is of the view that the process itself is not to be owned by the Compliance or Risk function but the effective involvement of Risk and Compliance Functions in the POG process is a desirable practice.

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Product Testing

Industry Feedback Received

- The industry commented that the section on Product Testing within Chapter 3 of the Rulebook outlines a general impact analysis rather than going into the actual testing procedures/processes which should be in place. As a result, the industry is of the opinion that this section goes into great detail on scenarios and planning but is ambiguous when it comes to system integration testing and user acceptance testing which is required prior to launching a new product.

- Furthermore, it commented that R.3.5.27 specifically is considered to be excessive when it comes to deposit products and requested clarification from the Authority on how the principle of this rule should be applied in connection with deposit products.

MFSA Position

- With respect to the proposed Section 5 of Chapter 3 on Product Testing, as outlined in the EBA's Final Report on POG Guidelines, the aim of these requirements is to ensure that the Regulated Person's processes (including product design and testing processes) also consider the needs of Clients, and not only focus on the prudential needs of the Manufacturer.

  Therefore, the Regulated Person has to be able to establish consumer objectives at the design phase, which can then be revised during product monitoring after the product launch. The product governance requirements, overall, assist Regulated Persons in bringing products that are more appealing to Clients to the market, while product testing assists a Regulated Person, at the design and development stage, in developing products. The principle of proportionality applies, such that, for instance, where the risk to Clients is high or the product is not easy to understand, the testing carried out by the manufacturer should include a wider set of scenarios.

- To this effect, requirements within R.3.5.27, that emanate from EBA Guidelines, have been retained in view of the concept that POG requirements apply to all products, taking into consideration the said principle of proportionality.

Industry Feedback Received

- The industry also requested clarification on the applicability of the metrics and factors set out in R.3.5.39. It is of the opinion that these are too vague and unclear on how to demonstrate fairness of fees and charges given the subjectivity and nature of banking retail products.

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- The industry highlights that the impact assessment requirements are deemed excessive and unnecessary in the context of banking retail products, without adding any value if the institution is only offering plain-vanilla banking products like savings and term accounts. The industry also remarked that fees and charges on deposit products are relatively few and far in between, so one should not extend the impact assessment to all kinds of deposit products.

MFSA Position

- The Authority would like to clarify that the elements outlined in R.3.5.39 are aimed to ensure that charges should be reasonable and equitable for both the Clients and the Regulated Person and should be commensurate with the level of service being provided. It is up to the Regulated Person concerned to show that any increase in fees is justified by added value in service to Clients and is reasonable and proportionate in the context of the increased costs.

- In accordance with EBA Guidelines and the relevant EBA Reports, "Deposits" fall within the scope of the EBA Guidelines. The overall objective of these EBA Guidelines is for the retail banking sector to consider the needs of its Clients when designing products and to develop Retail Products with the Client's interest, objectives and characteristics in mind.

  Similarly, the new impact assessment requirements apply accordingly on the principle of proportionality. The Authority, however, considers that no exemptions from this process relating to the fees impact assessment will be provided, considering that Deposits are one of the most resorted to products by Clients, including Vulnerable Clients. The Authority would like to note that it is in the context of such products that Regulated Persons should ensure that these are fairly priced to retain accessibility thereto, even by Vulnerable Clients.

Industry Feedback Received

- On the basis of R.3.5.41, the industry has sought clarification as to why is there a requirement for a three-month notification period to the MFSA, in view that such a requirement would slow down the launch of new products and apply changes (including pricing) to existing products. Industry players emphasised that this is considered excessive, considering that following the MFSA's no objection, the Regulated Person would need an additional two months to pre-notify customers of any changes in fees. Apart from the fact that the Regulated Person may be losing out on opportunities to go to the market earlier, this would also mean that a change in fees would need to be approved by the Regulated Person's product governance committee at least 5 months in advance before this change takes place.

- The industry also requested specific clarification as to the Authority's intention of including proviso (c) of R.3.5.41. Furthermore, the industry commented that proviso (a)

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of R.3.5.41 does not clarify what the capacity of the Compliance Officer is with regard to the impact assessment.

MFSA Position

- It is acknowledged that Regulated Persons are independent commercial entities and that the imposition of bank fees and charges are decisions to be made by the Boards and Management of individual Institutions which need to be run on an independent and commercial basis. In this context, the Authority considers that in establishing fees, Regulated Persons should be mindful of their social responsibilities to ensure that Clients, especially vulnerable ones, are treated fairly and are given a good service without incurring excessive and unjustified fees, such that basic banking services remain accessible.

  The aim of such requirements is to ensure that Credit Institutions effectively adopt a more consumer-centric approach in its decision-making related to the context of fees and charges. These requirements enable the Authority to understand objectively whether the fees or charges to be applied to Clients appear to be fair and proportionate to the costs to be borne by the Institution.

  In addition, the Authority would like to emphasise that the assessment of fees should be already part of the Regulated Person's product approval processes. Therefore, in accordance with POG requirements, Regulated Persons should have already be assessing the impact of fees when designing new products and when changing fee structures of existing products, which is considered to constitute a significant change thereto.

  In order to ensure further clarity, the Authority has amended R.3.5.41 such that the minimum three (3) months notification period is instead replaced with clearer obligations placed on the Regulated Person as follows:

  The Regulated Person shall not impose fees or charges related to new Retail Products or Services and, or to existing Retail Products or Services, unless:
  a. the Regulated Person previously notifies such fees or charges to the MFSA;
  b. the Regulated Person receives feedback from the Authority with respect to such notification within a time period of fifteen working days; and
  c. the Regulated Person concludes its interaction with the Authority with respect to the notification process and aligns such fees and charges, taking into account the outcome of such interaction.

  On the other hand, the requirements relating to the pre-notification of Clients and relevant time frame are a distinct matter which have been tackled in other sections of this Feedback Statement.

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- Furthermore, the Authority would like to clarify that the aim of the requirements in R.3.5.41(c), which requires a statement as to the additional income likely to accrue from the fees and charges, is to assist Regulated Persons in demonstrating the justification and proportionality of the proposed fees. This would ensure that the fees are not being imposed merely to pass on costs to Clients without a corresponding increase in value to Clients.

- In terms of the EBA POG Guidelines, the Board of Directors of a Regulated Person should approve the POG arrangements – i.e. the process – not the Retail Product itself. Therefore technically, whether the Board of Directors approves the final product or not depends on the processes adopted by the Regulated Person. Notwithstanding, the proposed Rules are being amended to the effect that the impact assessment of new fees on products would need to be signed off by the person or body which, in terms of the Regulated Person's POG arrangements, is responsible to approve the Regulated Person's products or services before these are provided or distributed.

Product Monitoring and Remedial Action

Industry Feedback Received

- The industry reiterated its feedback on the concept of the identified target market in the context of banking retail products, even from a product monitoring perspective. It commented that deposit accounts are issued as part of a bank's intermediary function and are not issued according to the needs, characteristics and objectives of the target market.

- With specific reference to R.3.7.50 paragraph (h), the industry requested clarification from the Authority on whether the Regulated Person would need to wait for the Authority's no objection to proceed with the proposed course of action.

MFSA Position

- With respect to product monitoring, R.3.6.42 refers to the monitoring of the product once launched, to see if it behaves as expected and whether it continues to meet the needs of Clients. Regulated Persons are expected to monitor the product on an ongoing basis to ensure that the interests, objectives and characteristics of Clients continue to be appropriately taken into account. Moreover, in terms of the EBA's Report, it is essential to include customer-centric measures when monitoring a product or services provided to clients.

- In general, the requirements for remedial action have been revisited by the Authority and amended accordingly to provide for a more concise list of indicative appropriate action that can be taken by the Manufacturer in the context of remedial action. This includes,

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among others, amendments to R.3.7.50 in order to retain only requirements emanating from EBA Guidelines or EBA Reports.

Target Markets

Industry Feedback Received

- Apart from the generic comment on the concept of target markets within the remits of banking retail products, the industry sought clarification specifically on the use of the negative target market.

MFSA Position

- Through the requirements of R.3.8.52, Manufacturers are required to cover in their POG arrangements the steps and features that need to be followed to identify, and update, when necessary, the relevant Target Market of a Retail Product. As indicated in the EBA Reports, it is considered good practice for the assessment to vary depending on the risk borne by the Client and the degree of complexity and the nature and characteristics of the Product.

  In general, the requirements for target markets have been revisited by the Authority and amended accordingly to provide for a more concise list of indicative elements to be taken into account when identifying the target market.

  In EBA's Final Report of the POG Guidelines, EBA considers that greater product variety can be valuable for Clients, but increased product numbers can also make shopping around more difficult and can obscure, rather than clarify, the basis for a rational purchasing decision. Under the POG Guidelines the Manufacturer will therefore need to demonstrate as to why a new product variety is likely to better serve Clients' interests.

  With respect to the Negative Target Market, the general principle is that Regulated Persons should sell only to Clients who are not part of the Target Market on a justified basis. Therefore, as indicated in the EBA Reports, having a clear policy on how to respond to selling outside the identified Target Market is an example of good practice. Therefore, to prevent mis-selling, it is necessary for Regulated Persons to identify the market segments for which a product is considered likely not to meet their interests, objectives and characteristics, where relevant.

  As stated in R.3.2.19, POG arrangements should be proportionate to the nature, scale and complexity of the relevant business of the Manufacturer. The implementation/ application of the arrangements should have regard to the level of potential risk for the Client and the complexity of the product. In so far as the term "complexity", the EBA Guidelines establish the principle of proportionality which is reflected in the Rulebook.

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The proportionality clause is as open as possible to give Regulated Persons the necessary flexibility to assess on a case-by-case basis.

Foreign Currency Loans

- In cases where a Credit Agreement relating to Residential Immovable Property is considered a foreign currency loan, a new Rule has been inserted to clarify that "the other arrangements" referred to in R.3.14.105(b) shall, at least, include a risk warning to Clients, specifying any potential foreign exchange risks which can impact the Client's repayment capability due to currency fluctuations.

- Moreover, a new Guidance has been inserted to clarify that where such Credit Agreement is denominated in Euro ("currency A"); and the Client receives income or holds assets in currency A but also receives income or holds assets in another currency ("currency B"), the Credit Agreement will not be considered as a foreign currency loan unless the credit is to be repaid wholly or in part from the income received or assets held in currency B.

- Regulated Persons are to disclose in their marketing material if they offer foreign currency credit agreements relating to residential immovable property due to the fact that the income in whole or in part is denominated in a foreign currency other than that of the credit agreement. If foreign currency loans are offered, Regulated Persons are to provide the currencies in which such loans may be converted to and the warning statement relating to currency fluctuations. Furthermore, Regulated Persons are to satisfy the obligations emanating from R.3.14.108 to R.3.14.110.

Other Considerations

Industry Feedback Received

- The industry requested clarification on whether the training referred to in R.3.9.69 should be delivered by an external provider or whether internal training would suffice.

MFSA Position

- The Authority would like to clarify that the requirements laid down in Rule R.3.9.69 and R.3.10.73 both ensure that staff employed by the Regulated Person and who are involved in designing a product, need to be competent and appropriately trained. Such staff members need to understand and be familiar with the Regulated Person's product features, characteristics and risks in order to be able to adequately serve the Client.

  Moreover, in EBA's Final Report of the POG Guidelines, the EBA expects that the staff involved in the design of the product needs to be appropriately trained and have the relevant knowledge to understand the specific product's characteristics. This is because

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only staff that understand the product can adequately define the relevant target market and identify the persons for whom the product is deemed as to meet or not to meet their interests. Training to staff is to be provided by competent persons, irrespective whether such training is inhouse or provided by an external provider.

Industry Feedback Received

- The industry suggested that Section 14 of Chapter 3 is to be transferred to Chapter 5 instead. Furthermore, the industry also questioned the relevance of certain aspects covered by Annex I to Chapter 3.

MFSA Position

- In response to some of the industry's specific feedback, the Authority would like to clarify that Section 14 of Chapter 3 contains relevant provisions transposing the Mortgage Credit Directive and which is thought to be adequately positioned since these are particularly relevant in the context of designing and monitoring products in line with POG requirements. Similarly, the Annex to Chapter 3 has also been retained in view of the fact that it contains a set of good practices emanating from the EBA Reports relating to POG Guidelines.

Chapter 4 – Conflicts of Interest

Industry Feedback Received

- The industry requested clarification on the definition of Chinese walls within the context of conflicts of interest. Furthermore, the industry also commented that while G.4.1.1 and G.4.1.2 stipulate the importance of such Chinese walls, it is imperative for the Authority to consider the practicality and relevance of these barriers for every distinct business function. It therefore suggested that a credit institution should retain the prerogative to assess whether the establishment of a Chinese wall is necessary, based on a thorough and ongoing assessment of each business activity.

MFSA Position

- The Authority would like to clarify its position regarding the application of Chinese walls in the context of conflicts of interest. The concept behind the use of Chinese walls is to have a virtual barrier in order to avoid the exchange of information between departments, functions or internal stakeholders of the same institution. Through G.4.1.1 and G.4.1.2, the Authority is not instructing the extent of access of information that the Regulated Person should give to its employees and are in fact classified as guidance, rather than rules. The Rulebook allows Regulated Persons to manage their own degree of access of

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information within the institution – as permissible by other regulatory requirements on data and data protection.

Industry Feedback Received

- The industry requested clarification on whether the requirements covered in Section 3 of Chapter 4 are in line with the relevant EBA Guidelines on Remuneration.

- Furthermore, the industry also commented that according to R.4.3.36, having complex policies and practices may lead to inconsistent approaches and hamper proper knowledge or control of the policies by the Compliance Function. To this effect, the industry is of the opinion that the Compliance Function should not own and hence have control over the remuneration policies and practices in order to be able to carry out its second line role effectively.

- Moreover, the industry commented that according to R.4.3.42, the Compliance Function is required to confirm that the remuneration policies and practices comply with the remuneration requirements. The industry remarked that it is specified that the Compliance Officer must verify that the remuneration policies and practices comply with conduct of business and conflicts of interest requirements, and hence must have access to all relevant documents.

MFSA Position

- The Authority would like to emphasise that in the General Requirements section of Section 3 of Chapter 4, the Rulebook is reflecting the requirements emanating from EBA Guidelines on Remuneration and therefore deals with actions to be taken by Regulated Persons in order to avoid conflicts of interest arising due to remuneration practices within the institution.

- More specifically, R.4.3.36 does not stipulate that the Compliance Function of a Regulated Person should own the remuneration policies and practices. The requirements emanating from this rule are that the remuneration policies are not to be too complex to the extent that any misconduct cannot be identified. As a second line of defence, the Compliance Function is to ensure that the remuneration policies drawn up by the Regulated Person and approved by its Board of Directors are in line with the requirements of the Rulebook. Hence, the main intention is that staff members are to keep the Regulated Person's Clients at the centre of their operation and not mis-sell products with the intention of reaching revenue targets at the cost of providing a product which does not meet the Clients' needs.

- Reference is once again made to the role of the Compliance Officer, as already clarified in other sections of this Feedback Statement and the revised definition of the term.

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Chapter 5 – Bank-Client Relationships

General Considerations

Industry Feedback Received

- The industry remarked that in view of Section 1.1 of Chapter 5, such requirements might be in conflict with CBM Directive 1.

MFSA Position

- The Authority would like to clarify that as per the provisions of the definition of Retail Product as outlined in the Glossary of Definitions to the proposed Rulebook, for Payment Services, Payment Instruments, other means of payment and Electronic Money referred to in paragraphs (e) to (h) of the said definition respectively, the requirements of the Rulebook are considered to apply mutatis mutandis with respect to matters which are not covered by the provisions of the Central Bank of Malta ('CBM') Directive 1 issued in terms of the Central Bank of Malta Act (Cap. 204). Therefore, for the abovementioned products, CBM Directive 1 shall prevail the requirements of the Rulebook in the areas covered by the said Directive.

- Furthermore, the Authority would like to provide its response to the feedback received in connection with specific proposed Rules under Chapter 5 of the Rulebook as listed below.

Industry Feedback Received

- With reference to R.5.1.3, the industry sought clarification on whether such Customer Charter being referred to within this rule, should be approved by the Authority or otherwise. The industry also requested clarification on the term "deemed refusal".

MFSA Position

- The proposed Annex I to Chapter 5 that included a draft Customer Charter for opening Payment Accounts and setting up Credit Facilities has been removed from the revised Rulebook. However, the requirement for setting up such a customer charter still holds. With respect to the term "deemed refusal" referred to in R.5.1.3, any delay by a Credit Institution in determining whether to open a payment account or issue a Credit Agreement beyond the time stipulated in the Credit Institution Charter shall be considered a deemed refusal. It is important to highlight that the period is to start running from the date of full and complete submission by the client of all the documentation

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requested by the bank for this purpose. Furthermore, the Authority would like to clarify that the contents of the Customer Charter are not subject to the Authority's approval.

Industry Feedback Received

- With reference to R.5.1.7, the industry queried the relevance of the requirements emanating from this rule in the context of banking retail products and how is it applicable to saving and term deposit accounts. Furthermore, the industry required clarification on sub-paragraph (i) in view of the provision of advice on banking retail products.

MFSA Position

- The requirement under R.5.1.7 contains general good conduct principles which Credit Institutions should follow, but should not be considered to be an onboarding questionnaire and shall apply to all Retail Products as defined within the Rulebook. Furthermore, following industry feedback, sub-paragraph (i) has been amended to read that the Regulated Person shall *"ensure that it only provides Information relevant to Retail Products or Services which the Regulated Person considers to meet the Clients' needs*". In line with this, staff members of the Regulated Person shall provide all the product features and the relevant fees related to that Product so that the Client can take an informed decision. Therefore, staff members must be able to identify the Clients' needs and propose the products which can meet the Clients' needs.

Industry Feedback Received

- With reference to rules R.5.1.9 to R.5.1.11, the industry requested the Authority to clarify whether the expectation is for banks to actively monitor the emergence of potential scams and if so, the breadth and intensity of such monitoring, or only to notify clients if it becomes aware and Clients are affected.

MFSA Position

- Credit Institutions are expected to monitor transactions and to alert Clients where irregular patterns are identified. In addition, should the Regulated Persons become aware of any new scams, they are obliged to inform their Clients via the best possible means under their own discretion.

Industry Feedback Received

- With reference to rules R.5.1.15 to R.5.1.17, the industry queried on the relevance of R.5.1.15. It also requested the Authority to provide guidance in relation to how one is to quantify the availability of ATM and/or deposit machines. Furthermore, the industry queried on the Authority's expectation and how much in advance should Clients be

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informed beforehand of any planned downtime for mobile banking applications, internet banking applications, ATMs or services offered at branches being limited or unavailable.

MFSA Position

- The purpose of R.5.1.15 is to address the fact that not all potential Clients have the capability and the skill to look for such information on the MFSA's website. Furthermore, the main purpose of the ATM is to provide a 24/7 service to Clients. Accordingly, where ATMs are out of service, this should be limited to the shortest timeframes possible. To this effect, any planned downtime for any mobile banking application, internet banking, ATMs or branch services, should be clearly communicated to Clients at least 48 hours before, wherever possible. This should be carried out through any possible media deemed applicable by the Regulated Person, such as notifications on social platforms, websites and visual notices at branches.

- A new rule has been inserted in the final version of the Rulebook (R.5.1.25) in order to ensure adequate reporting to the MFSA by Regulated Persons who are required to submit to the MFSA, on an annual basis, by 31 May of each year, the Conduct-Related Data Return pursuant to MFSA Circular of 27 April 2023. The data reported is to be as at the end of the reporting year, according to the financial year.

Industry Feedback Received

- With reference to R.5.2.26 sub-paragraph (e), the industry commented that customers regularly call to give instructions to move money. The industry remarked that it would be unrealistic to obtain in writing from each Client the fact that the can give instructions over the phone.

MFSA Position

- The Authority would like to clarify that unsolicited calls (or cold calls) being referred to in this Rule are calls that are initiated by the bank as a means of marketing, not calls initiated by Clients.

Industry Feedback Received

- With reference to R.5.2.28, the industry requested clarification on the situation where the Client would have missed a delivery.

MFSA Position

- The proposed rule has been amended to clarify that an example of misleading communication could include leaving a message that the Regulated Person tried to call or visit the Client to entice the Client to call back and therefore be considered as being

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the Client who initiated contact to start a sales process by promoting a particular product. The phrase "missed a delivery" has been changed to "missed a visit" in order to clarify.

Industry Feedback Received

- With reference to R.5.2.31, the industry queried in a scenario where a sole trader is using his residential home as his office has asked the bank to visit his home, whether there would still be the obligation for the bank to obtain the consent in writing from the customer.

MFSA Position

- The Rule has been amended to clarify that consent from the Client is required. This also applies to situations where the Client is a sole trader using his/her personal residence as his/her operational office for the sole trading business. The following provision has been added accordingly to this effect:
-

  For this purpose, the Regulated Person may obtain a general consent for such visits and shall keep record for every visit so undertaken in relation to:
  a. purpose(s) for which a personal visit is to be made, including in the case of sales and marketing, the types of Retail Product to be discussed during the personal visit; and
  b. the time and date for the personal visit.

Industry Feedback Received

- With reference to R.5.2.38, the industry raised its concern on the viability of such requirements emanating from this proposed rule in view of the number of Client meetings held both physically and online on a daily basis.

MFSA Position

- The proposed Rule has been amended to reflect that the requirements are limited only in cases of face-to-face conversations with Clients in the context of purchase of Retail Products by Clients and ongoing maintenance of Retail Products held by Clients. Such face-to-face conversations need not be signed by the Client but needs to be retained in the Regulated Person's record keeping system and provided to the MFSA upon request.

Industry Feedback Received

- With reference to Section 4, the industry remarked that in relation to customers that are at present not in scope for the Payment Accounts Directive, a lot of work needs to be

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carried out in advance that would require the Regulated Person to obtain 12 months of data.

MFSA Position

- As already highlighted under a previous section of this Feedback Statement, micro-businesses are now considered out of scope from the Rulebook and this section will therefore apply only to natural persons and sole traders. A transitionary period of 12 months from the publication of this Rulebook will be granted in relation to sole traders.

Industry Feedback Received

- With reference to R.5.4.57, the industry queried on whether, in the case of a sole trader, there should be the separation between an account held in the name of the owner transacting in his personal capacity (non-business activities) vs. in their capacity as a sole trader (business activities).

MFSA Position

- The Authority would like to re-emphasise the importance that a natural person is to have separate accounts to segregate funds related to his personal finances from those related to his/her business as a sole trader.

Industry Feedback Received

- With reference to Section 5.A.1 of Chapter 5, the industry requested clarification on whether the requirements emanating from this section are in alignment with applicable prudential requirements.

MFSA Position

- The Authority would like to clarify that Section 5.A.1 of the proposed Rulebook is comprised of EBA guidelines to ensure alignment with applicable prudential requirements.

Industry Feedback Received

- With reference to R.5.5.72, the industry queried on what should constitute an acceptable net disposable income threshold and what is meant by each type of Client.

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MFSA Position

- R.5.5.72: The purpose of this provision is to provide alignment across the different branches of the Regulated Person, eliminating any personal interpretation among the Regulated Person's staff. Therefore, the scope of introducing this rule is for Regulated Persons to provide to their employees who are tasked with drafting and approving credit proposals a matrix that is consistently applied in specifying the net disposable income for different types of Clients. In doing so, the Regulated Person would have a single matrix that is applied consistently within the organisation without any subjectivity among staff members drafting and approving loan proposals. This matrix should be approved internally by the Regulated Person in line with its internal governance approval processes but does not have to be approved by the Authority.

  The net disposable income is to be calculated after deducting tax, national insurance contributions, rent, alimony and aggregated loan repayments (including both those with the same Regulated Person and any other Credit Institution, Financial Institutions and Non-Bank Lenders). Different types of Clients would require varying levels of net disposable income, for example a Client with one dependent would need a lower net disposable income than a Client with more dependents. Depending on the Clients' income, there are expenditure trends which are to be considered by the Regulated Person, in view that higher income earners tend to have higher consumption trends.

Industry Feedback Received

- With reference to R.5.5.146, the industry queried on the fact that this proposed rule was replicating Paragraph 113 of EBA Guideline EBA/GL/2020/06 however certain elements were omitted.

MFSA Position

- The proposed R.5.5.146 has been amended to reflect the full requirement emanating from Paragraph 113 of EBA Guideline EBA/GL/2020/06.

Industry Feedback Received

- With reference to R.5.7.173, the industry suggested that the words 'if any' should be added at the end of paragraph (a).

MFSA Position

- The proposed R.5.7.173 has been amended to include the words 'if any' within sub-paragraph (a) of the rule.

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Industry Feedback Received

- With reference to R.5.7.177, the industry raised concern on the applicability of this proposed rule under the merits that income levels across Member states vary considerably so fees are to be proportionate to income levels where the Credit Institution operates.

MFSA Position

- The proposed R.5.7.177 is a transposition from the Payment Accounts Directive Article 18(3).

- Notwithstanding, this has been clarified to read that Regulated Persons shall ensure that the reasonable fees referred to in other rules within the same section are established taking into account at least the following criteria:
  a. national income levels in Malta or in the Member State where services on Payment Accounts are provided; and
  b. average fees charged by other Regulated Persons in Malta or by the other Credit Institutions in the Member States where services on Payment Accounts are provided.

Industry Feedback Received

- With reference to R.5.7.179, the industry raised the question of whether this should cover other reasons like Anti-Money Laundering ('AML') or lack of Customer Due Diligence ('CDD') provided upon customer review.

MFSA Position

- In response to the feedback received on R.5.7.179 , the Authority would like to clarify that any use of the account which goes against AML legislation would be considered as an illegal purpose. In addition, the bank should always be in a position to ensure that it has on record the latest updated CDD information for its clients on an ongoing basis, as per requirements emanating from the relevant AML legislation.

Industry Feedback Received

- With reference to R.5.7.181, the industry pointed out that sending termination notification in writing by registered mail may lead to GDPR breaches.

MFSA Position

- The proposed R.5.7.181 has been amended to read that in cases of terminations referenced under the previous rule, the Regulated Person shall, upon termination of the framework contract, inform the Client of the grounds and the justification for termination

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in a Durable Medium. It is up to the credit institution in question to ensure that the manner in which such notification is done does not breach any laws and regulations, including the GDPR.

Industry Feedback Received

- With reference to R.5.7.186, the industry requested clarification on the term "permitted by law".

MFSA Position

- The term "permitted by law" within the proposed R.5.7.186 is meant to refer to examples where, due to tipping off provisions under the AML legislative framework, Regulated Persons will not be in a position to block or close the Payment Account. This is applicable to all types of Payment Accounts.

Industry Feedback Received

- With reference to R.5.7.187, the industry sought clarification on whether it expects banks to follow the specific scenario portrayed within the proposed rule to classify an account as dormant, or if banks are free to use other classifications.

MFSA Position

- The proposed R.5.7.187 has been amended to read that a Regulated Person "*shall*" classify a Payment Account as a Dormant Account if the Client does not perform any activity on the account for a period of twenty-four consecutive months, save for any interest debited or credited from the account and/or any service charges.

Industry Feedback Received

- With reference to R.5.7.189, the industry sought clarification on the expectations of the Authority on the requirements emanating from this rule.

MFSA Position

- R.5.7.189: The Authority would like to note that this proposed rule has been removed.

Industry Feedback Received

- With reference to R.5.7.190, the industry sought clarification on the fact that there might be AML/CFT implications under certain circumstances with the proposed wording of this rule.

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MFSA Position

- R.5.7.190 has been amended to read that when, in accordance with the terms and conditions of the Retail Product, the Regulated Person is entitled to cover any administrative fees by debiting the balance due on the Client's Account and to exercise the right to initiate the process to terminate the Client's Account, the above Rules in this Section, including the respective notifications and timely communication, shall apply, providing that at no time the Client's Account is to end up in debit.

- With such a rewording, Credit Institutions can initiate the process to terminate irrespective of the balance in the Client's account, subject to providing notifications in a timely manner.

Industry Feedback Received

- With reference to R.5.7.194, the industry was of the opinion that the requirements of this rule will put unnecessary pressures on the Regulated Person, especially in view of the fact that the customer would already have been pre-notified.

MFSA Position

- The Authority would like to note that the proposed R.5.7.194 and R.5.7.188 have been merged into a single provision in order to streamline the number of notifications that Regulated Persons would need to send to Clients before the respective Client is classified as dormant. Therefore, in line with the new proposed rule, it would be sufficient for the Regulated Person to send one notification at least 30 days in advance, as long as all relevant information is provided to the Client.

Industry Feedback Received

- With reference to R.5.8.199 and R.5.8.200, the industry queried the relevance of these rules in view of the similarity of requirements emanating from other rules within the Rulebook.

MFSA Position

- The Authority would like to note that the proposed rules R.5.8.199 and R.5.8.200 have been removed in view of the fact that these are covered by other rules within the Rulebook.

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Interest Rate Increase following change in risk presented by the Client on the basis of the terms and conditions of the credit agreement

- R.5.8.201: The Authority would like to clarify that this Rule has been removed in view of the fact that its content has been merged with the applicable rule in Chapter 1 Section 1. The purpose of this was to clarify the applicable requirements with respect to the timing of notifications to Clients with respect to fees, terms and conditions and rates of interest. The Authority notes that industry feedback regarding the notification periods of 60 days originally proposed in the context of borrowing rates could have been too onerous. This has now been reduced to 30 days, also taking into account that Clients would have been made aware of the possibility of changes to their borrowing rate at loan origination stage. However, with respect to changes in other terms and conditions and charges and fees, the Authority is retaining its original position that these should be notified to Clients within a 60-day notice period.

Industry Feedback Received

- With reference to R.5.8.203, the industry requested clarification on whether this applies for early repayment fees and any other agreed fees at the stage of the credit agreement.

MFSA Position

- The Authority would like to clarify that the purpose of R.5.8.203 is to ensure that if the Regulated Person changes any key features of the Retail Product, and the Client decides to terminate the relationship for that reason, the Client should not be obliged to pay any fees with respect to such termination. The Regulated Person however is entitled to make changes to terms and conditions as long as Clients are notified in accordance with other requirements of the Rulebook.

Industry Feedback Received

- With reference to Rule R.5.11.277, the industry raised its concern that such a rule can allow for abuse from the Client's end at the detriment of the Regulated Person.

MFSA Position

- The Authority would like to clarify that in terms of R.5.11.277, for Clients not to abuse of such provisions at the detriment of the Credit Institution, Regulated Persons are expected to have internal procedures in place that ensure that Clients do not abuse of such provisions. In addition, further guidance has been introduced following the consultation period to cover additional aspects for the treatment of Clients with mental capacity limitations.

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- In addition, the Authority would like to further clarify that In Section 11 on Measures related to Arrears, Forbearance and Enforcement Proceedings pursuant to Credit Agreements, additional requirements applicable to Consumer Credit Agreements have been inserted in order to ensure proper transposition of the amendments made to the Consumer Credit Directive by means of the NPL Directive (EU) 2021/2167.

Industry Feedback Received

- With reference to Rule R.5.13.308, the industry queried on the fact that such a requirement is already covered by Banking Rule BR/22. In addition, the industry also commented that this proposed requirement might hinder the front-line staff from logging complaints due to the onerous requirement of documenting and signing.

MFSA Position

- The Authority would like to clarify that the requirements of R.5.13.308 emanate from Banking Rule BR/22 which will be superseded by the issuance of this Rulebook. Furthermore, in order to formally record an oral complaint, articulating a summary of the complaint and requesting the Client to confirm in writing is deemed essential. Regulated Persons are expected to provide training to front office staff and call centre agents to inform Clients as necessary and using the most appropriate means on a case-by-case basis about the possibility to submit a complaint in writing or through internet banking messages, or to visit a branch to file such a complaint.

Industry Feedback Received

- With reference to Rule R.5.13.312, the industry sought clarification as to the reason why Regulated Persons are being requested to provide to the MFSA publicly available decisions.

MFSA Position

- The MFSA considers that the requirements under R.5.13.312 are necessary for the sake of transparency and for the Authority to be notified immediately about any such cases. It is important that Regulated Persons authorised and licenced by the MFSA disclose to the Authority any decisions taken by the Arbiter for Financial Services in this regard, and if these have been appealed.

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Conclusion and Next Steps

Having considered stakeholders' feedback, the Authority shall be proceeding with issuing the Rulebook for Credit Institutions offering Retail Products and Services.

Coming into Force of the Rulebook and Transitory Periods

Amendments to the local legal framework are currently underway so that the MFSA will assume the supervisory remit, currently under the Malta Competition and Consumer Affairs Authority (MCCAA), for the following Directives as follows:

(a) the Mortgage Credit Directive (Directive 2014/17/EU), in its entirety;
(b) the Consumer Credit Directive (Directive 2008/48/EC), only in so far as its requirements apply to entities authorised under the Banking Act or the Financial Institutions Act to grant or promise to grant credit.

Accordingly, the provisions in this Rulebook which transpose the requirements of the above Directives will only come into force when the amendments to the local legal framework are issued and become effective and the current Credit Agreements for Consumers relating to Residential Immovable Property Regulations (S.L. 378.10) and the Consumer Credit Regulations (S.L. 378.12) are repealed.

In order to grant credit institutions sufficient time to make the necessary arrangements to their internal systems and processes so that they can abide by the appliable requirements of this Rulebook, the Conduct of Business Rulebook for credit institutions will come into effect in a staggered approach as follows:

(a) Those provisions which transpose the requirements of the Mortgage Credit Directive, the Consumer Credit Directive and the Payments Account Directive will come into force on the date when the abovementioned legal amendments are in place and the relevant Legal Notices currently transposing the above 3 EU Directives are repealed. This date will be communicated to the industry as soon as it becomes known.

(b) The other provisions of the Rulebook which do not fall under (a) above, including the applicability of such requirements to natural persons who are acting in the course of their trade, business or profession, will come into force as from **1 March 2026**. Banking Rule 24 Annex 1 on Product Oversight and Governance Arrangements for Retail Banking Products and Banking Notice 05 on Advertising for Deposits will also be repealed as from this date.

In the light of the above, credit institutions are actively encouraged to start working on their internal processes, procedures and systems with immediate effect to ensure that they are

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in a position to implement the requirements of this Rulebook in their systems by the abovementioned timelines.

Any queries or requests for clarifications in respect of the above should be addressed by email to conduct.policy@mfsa.mt.

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