

# MFSA

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## MALTA FINANCIAL SERVICES AUTHORITY

### **Circular on Markets in Financial Instruments Directive ('MiFID II') and Markets in Financial Instruments Regulations ('MiFIR')**

This Circular is being addressed to all market participants, particularly Market Operators, Trading Venues, Investment Firms, or any other related entities subject to MiFID II and MiFIR. Readers will find updates on the Questions and Answers ('Q&A') on [i] transparency, [ii] market structure topics and [iii] data reporting.

#### **1) Questions and Answers on MiFID II and MiFIR transparency topics**

On the 3<sup>rd</sup> October 2016, the European Securities and Markets Authority ('ESMA') published a new set of Q&A on MiFID II/MiFIR transparency topics, which was further updated on the 3<sup>rd</sup> November, 18<sup>th</sup> November 2016, 19<sup>th</sup> December 2016 and 31<sup>st</sup> January 2017. The scope of the Q&A is to provide responses to questions raised by the general public, market participants and competent authorities in relation to the practical application of MiFID II/MiFIR in this area.

More specifically, the Q&A provides explanations on the systematic internaliser regime ('SI regime'). In order to ensure an objective and effective application of the definition of systematic internaliser to investment firms, ESMA created thresholds for systematic internalisation containing an exact specification of what is meant by frequent, systematic and substantial basis. With respect to the calculation of the said threshold, aimed at determining whether an investment firm is a systematic internaliser or otherwise, the Q&A provides clarification relating to:

- The level at which a firm must perform the calculation, where such firm is part of a group or operates EU branches;
- The transactions that should be exempted from, and included in, the calculation; and
- The level of asset class at which the calculation should be performed for derivatives, bonds and structured finance products.

Even though MiFID II and MiFIR requirements apply from 3<sup>rd</sup> January 2018, the earliest mandatory deadline by which firms must comply with the SI regime is 1<sup>st</sup> September 2018. Nevertheless, ESMA clarified that investment firms may opt-in the SI regime for all financial instruments from 3<sup>rd</sup> January 2018.

A copy of this Q&A may be accessed through the following [link](#).

## 2) Questions and Answers on MiFID II and MiFIR market structures topics

On the 18<sup>th</sup> November 2016, ESMA issued a Q&A on MiFID II/MiFIR market structures topics, which was further updated on the 19<sup>th</sup> December 2016 and 31<sup>st</sup> January 2017. The Q&A provides responses to questions raised by the general public, market participants and competent authorities with respect to the practical application of MiFID II/MiFIR vis-à-vis market structure topics; namely, [i] data disaggregation, [ii] direct electronic access and algorithmic trading, [iii] tick size regime and [iv] multilateral systems.

More specifically, the Q&A provides clarifications with regard to what constitutes algorithmic trading. It also provides clarification in relation to the reference to ‘market makers’ in Article 2(1)(d)(i)<sup>1</sup> and Article 2(1)(j)<sup>2</sup> of MiFID II; according to the Q&A, the reference to ‘market makers’ in MiFID II Article 2(1)(d)(i) and Article 2(1)(j) covers both firms engaged in a market making agreement according to Article 17(4) of MiFID II and other market makers covered by Article 4(1)(7) of MiFID I.

A copy of this Q&A may be accessed through this [link](#).

## 3) Questions and Answers on MiFIR data reporting

On the 20<sup>th</sup> December 2016, ESMA published a new set of Q&A on MiFIR data reporting, which was further updated on the 2<sup>nd</sup> February 2017.

More specifically, this Q&A provides explanations on the [i] date of request for admission to trading, [ii] date of admission to trading or date of first trade, [iii] International Securities Identification Number (‘ISIN’), Classification of Financial Instruments (‘CFI’) and Financial Instrument Short Name (‘FISN’) instrument identification code and underlying instrument code, [iv] timeline to obtain ISINs, [v] underlying instrument code for future contracts on sovereign bonds, [vi] maturity date for perpetual debt financial instruments, [viii] classification of CFI and FISN, [viii] request for admission to trading by the issuer, and [ix] base point spread of the index/benchmark of a floating rate bond.

A copy of this Q&A may be accessed through the following [link](#).

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<sup>1</sup> Article 2(1)(d)(i) states: This Directive shall not apply to persons dealing on own account in financial instruments other than commodity derivatives or emission allowances or derivatives thereof and not providing any other investment services or performing any other investment activities in financial instruments other than commodity derivatives or emission allowances or derivatives thereof unless such persons are market makers

<sup>2</sup> Article 2(1)(j) states: This Directive shall not apply to persons dealing on own account, including market makers, in commodity derivatives or emission allowances or derivatives thereof, excluding persons who deal on own account when executing client orders...

## **Contacts**

Should you have any queries on the above, please do not hesitate to contact Mr Edward Grech, Senior Manager, Securities and Markets Supervision Unit ([EGrech@mfsa.com.mt](mailto:EGrech@mfsa.com.mt)) Mr Nathan Fenech, Analyst, Securities and Markets Supervision Unit ([NFenech@mfsa.com.mt](mailto:NFenech@mfsa.com.mt)), or Ms Elena Jetcheva, Analyst, Securities and Markets Supervision Unit ([EJetcheva@mfsa.com.mt](mailto:EJetcheva@mfsa.com.mt)) for any further clarifications.

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