

Regulatory Compliance Update

Q2 2023

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Introduction

Our Mamo TCV Regulatory Compliance Quarterly Update is intended to keep Maltese regulated entities informed of regulatory changes and developments taking place mainly in the local financial services space.

In this issue, we focus on the sector specific and cross-sectoral regulatory updates relating to Investment Services, Asset Management¹, Insurance, and Company Service Providers.

Mamo TCV's team of regulatory and compliance advisors supports authorised persons and their compliance functions to remain compliant with their obligations in the ever-evolving regulatory landscape.

Get in touch with us to learn more about how we can help you.

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¹Asset Management shall refer to Funds, Fund Managers and their service providers.

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SECTOR SPECIFIC REGULATORY UPDATES

1.0 INVESTMENT SERVICES

1.1 Benchmarks Regulation – Updated Questions and Answers

The European Securities and Markets Authority ('ESMA') updated its [Questions and Answers](#) ('Q&As') on the Benchmarks Regulation.

Amongst others, the amendments that were carried out to the Q&As are mainly related to Q&A 7.5 on the information which may be relied on when the International Organisation of Securities Commissions' (known as 'IOSCO') principles assessment of compliance report is conducted, and to Q&A 7.7 relating to the roles and responsibilities of a legal representative under article 32(3) of the Benchmarks Regulation.

1.2 Benchmarks Regulation – Transition from USD LIBOR to Risk-Free Rates

The Financial Conduct Authority announced that the overnight and 12 months USD LIBOR settings ceased immediately after 30 June 2023.

Following the cessation of all the CHF, EUR, JPY LIBOR settings and some USD LIBOR settings, market participants across the globe widely adopted risk-free rates. The transition from LIBOR to risk-free rates was finalised on 30 June 2023 when the USD LIBOR panel ceased.

Market participants had to actively transition USD LIBOR contracts to risk-free rates. Moreover, they had to ensure that entities are ready for the implementation of USD LIBOR fallbacks, and had to also ensure that contracts and financial instruments referencing to USD LIBOR make a transition to the most robust risk-free rates.

1.3 ESMA's Final Report on the Review of Commission Delegated Regulation (EU) 2018/1646

On 30 May 2023, ESMA published a [Final Report](#) on the review of Commission Delegated Regulation (EU) 2018/1646. ESMA's Final Report reviews the regulatory technical standards on the information to be provided in an application for authorisation and registration under the Benchmarks Regulation.

ESMA's Final Report is composed of three main chapters; the first chapter covering the background information on ESMA's legal mandate to develop the draft technical standards, the second chapter covering the feedback received, and the third chapter covering the final proposal for the draft technical standards. The Final Report even includes the draft amendments to the technical standards along with a marked-up consolidated version of the draft technical standards, and a cost and benefit analysis.

1.4 ESMA's Consultation Paper on Position Calculation under the European Market Infrastructure Regulation ('EMIR')

ESMA published a [Consultation Paper](#) relating to the amendments to the

guidelines on position calculation under EMIR. Amongst others, the amended guidelines aim to ensure that trade repositories calculate positions in derivatives in a harmonised and consistent manner.

Interested stakeholders had the option to respond to ESMA's consultation by submitting a reply by 9 May 2023.

1.5 Public Register under EMIR

On 1 June 2023, the Malta Financial Services Authority ('**MFSA**') issued a [Circular](#) to inform market participants that ESMA updated the Public Register which identifies the classes of OTC derivatives subject to the clearing obligation.

The Public Register can be accessed from [here](#).

1.6 ESMA's Amendment of the European Single Electronic Format ('ESEF') Regulatory Technical Standards

ESMA decided to postpone the amendment of the ESEF regulatory technical standards to 2024. ESMA mainly took this decision due to the limited changes in the 2023 update to the International Financial Reporting Standards Taxonomy.

1.7 ESMA's Opinion on Market Outages

On 25 May 2023, ESMA published its [Final Report](#) on market outages. The Final Report contains ESMA's feedback to the responses received to the consultation paper that was published on 22 September 2022, and includes the final ESMA opinion to national

competent authorities on market outages.

ESMA expects national competent authorities to ensure that trading venues have in place an appropriate outage plan to be utilised in case of an outage.

1.8 The Securitisation Regulation

On 28 June 2023, the MFSA issued a [Circular](#) addressed to all market participants. The MFSA noted that in accordance with article 27(5) of the Securitisation Regulation, on 23 June 2023 ESMA published an updated list of all securitisations.

The updated list can be accessed through this [link](#).

1.9 Updated Q&As on the Securities Financing Transactions Regulation ('SFTR')

In June 2023, ESMA updated its [Q&A](#) document relating to reporting under SFTR. The changes made specifically relate to the inclusion of Q&A 16 relating to the reporting of those Securities Financial Transactions ('**SFTs**') concluded by institutions for occupational retirement provisions and pension funds.

ESMA clarified that the entities that have the reporting responsibilities under SFTR are the counterparties to the SFTs that they have concluded. In its Q&A document, ESMA noted that where a financial counterparty concludes an SFT with a non-financial counterparty which on its balance sheet dates does not exceed the limits of at least two of the three criteria laid down in article 3(3) of Directive 2013/34/EU, the financial counterparty shall be responsible for

reporting on behalf of both counterparties.

1.10 ESMA's Call for Evidence on Sustainability in Suitability and Product Governance

On 16 June 2023, ESMA launched a [call for evidence](#) on integrating sustainability preferences into suitability assessment and product governance arrangements under MiFID II. The aim behind this is for ESMA to gather industry feedback to understand the evolution of the market and provide answers as to how firms apply the new MiFID rules on sustainability.

Any contribution should be submitted through the online portal of ESMA by 15 September 2023.

1.11 Retail Investment Package

On 24 May 2023, the European Commission adopted a [Retail Investment Package](#) with the aim of placing the interests of consumers at the centre of retail investing.

The purpose behind this package is to empower retail investors to make investment decisions that are aligned with their needs and preferences, and to make sure that retail investors are treated fairly and are duly protected.

1.12 Developments in the Collation, Transmission and Validation of Supervisory Reporting Submissions

On 22 June 2023, the MFSA issued a [Circular](#) addressed to all investment firms licensed by the MFSA. The MFSA noted that changes were carried out in the file naming convention and modules available of the EBA XBRL submissions

through the MFSA Licence Holder Portal ('**MFSA LH Portal**') relating to supervisory reporting modules as from reference date June 2023.

For further details in relation to the XBRL file naming convention and the ZIP file naming convention, please refer to the following [link](#).

1.13 Changes affecting various Reporting Submissions

On 30 June 2023, the MFSA issued a [Circular](#) to inform licence holders of several updates that were carried out to the validation rules pertaining to the reporting submissions uploaded on the MFSA LH Portal. The validation rules include both changes to the current file naming conventions as well as the introduction of new validation rules.

***Effective date:** The changes came into effect on 10 July 2023.*

2.0 ASSET MANAGEMENT

2.1 Money Markets Funds Regulation

On 12 April 2023, the MFSA issued a [Circular](#) to inform the public of the amendments that were carried out to the Investment Services Rulebooks. The amendments mainly relate to:

- i. the updating of the Rules which implement the ESMA Guidelines on stress test scenarios issued under the Money Markets Funds Regulation; and
- ii. the introduction of new rules referring to Commission Implementing Regulation 2018/708 in relation to the template to be used by managers of Money Market

Funds when reporting to competent authorities.

Effective date: *The revised Rulebooks entered into force on 13 April 2023.*

2.2 Opinion to Prevent Undue Costs in Funds

On 17 May 2023, ESMA published an [Opinion](#) on undue costs of UCITS and AIFs. The Opinion contains suggestions to the European Commission for potential clarifications of the legislative provisions under the UCITS Directive and the AIFM Directive relating to the notion of undue costs.

The European Commission is currently working on policy proposals relating to Retail Investment Strategy with the aim to empower retail investors and enhance their participation in capital markets.

2.3 Updates to the Q&As on the application of the UCITS and AIFM Directive

On 14 June 2023, ESMA updated its [Q&As](#) relating to the application of the AIFM Directive. New sections were included relating to the notifications of AIFs, the notifications of AIFMs and also the calculation of leverage.

On 14 June 2023, ESMA updated its [Q&As](#) relating to the application of the UCITS Directive. Question 8 was introduced under Section I of the Q&As relating to the management of AIFs and pension schemes by UCITS management companies. Moreover, questions 9 and 10 were introduced under Section IV related to the de-notification of marketing arrangements for UCITS as well as the scope of

activities of new share classes of UCITS management companies respectively.

2.4 Notified Professional Investor Funds Framework

On 22 May 2023, the MFSA launched a [consultation](#) to seek feedback on the proposed legislative amendments relating to the establishment of a new framework for Notified Professional Investor Funds. The purpose behind this consultation was for the MFSA to gather opinions on the proposed legislative amendments being envisaged prior to promulgating the framework, including any applicable fees.

Interested parties had till 22 June 2023 to submit their comments on the above-mentioned framework.

2.5 Revised Application Forms for Fund Managers

The MFSA issued a revised application form for applicants seeking authorisation as Fund Managers, namely [Form AA05](#), and issued a new application form for De Minimis Fund Managers, being [Form AA33](#).

The MFSA has even issued three new appendices. [AX28](#) and [AX29](#) serve as checklists for the Risk Management Policy that is to be submitted by prospective AIFMs and UCITS Management Companies respectively. [AX27](#) serves as a declaration by applicants that seek to be authorised as AIFMs.

Effective date: *As from 3 July 2023, only the updated forms are being accepted by the MFSA for applicants seeking authorisation as Fund Managers.*

2.6 Revised Template of the Annual Fund Return

On 4 May 2023, the MFSA issued a [Circular](#) noting that the template of the Annual Fund Return was subject to minor changes.

The MFSA encouraged licence holders to utilise the last updated version of the Annual Fund Return, being version 1.8. Nevertheless, both versions 1.7 and 1.6 of the Annual Fund Return will be accepted by the MFSA for any submission made during 2023.

3.0 INSURANCE

3.1 MFSA issues a Consultation Document on the New Regime relating to Insurance Undertakings Carrying on Long-Term Business and the Distribution of Contracts of Insurance as Retirement Products

The MFSA issued a [Consultation Document](#) on 20 April 2023 informing the industry of the new regime regulating insurance undertakings carrying on long term business and the distribution of contracts of insurance as retirement products, which process is scheduled to close on 20 July 2023.

By virtue of the proposed regime, a new Chapter 16 is proposed to be added to the Insurance Rules and a new Chapter 7 is proposed to be added to the Conduct of Business Rules, among other newly introduced appendices to the Conduct of Business Rules.

Chapter 16 is proposed to contain prudential requirements which an insurance undertaking will be required to

comply with. On the other hand, Chapter 7 is proposed to lay down certain requirements, such as product oversight and provisions on disclosures with regards to products which are recognised under Maltese law as having the primary purpose of providing the client with an income at retirement.

3.2 MFSA issues a Circular on the Reporting Requirements under IFRS-17 in relation to Insurance Contracts

The MFSA issued a [Circular](#) on 25 April 2023 regarding International Financial Reporting Standards ('IFRS')-17 which was issued by the International Accounting Standards Board in May 2017 and which replaced IFRS 4.

All insurance undertakings are required to use these standards when drawing up their financial statements. IFRS-17 is applicable to annual reporting periods commencing on or after 1 January 2023.

Submission of the QNSTs and ANSTs for Q1-Q2 2023 can be submitted under the current IFRS 4; however, the Q4 2023 are to be reported under IFRS 17.

3.3 MFSA issues a Circular on the amendments to Appendix 14 of the Pension Rules for Occupational Retirement Schemes as a result of EIOPA's release of the Taxonomy Version 2.7.0 in 2022

The MFSA issued a [Circular](#) on 4 May 2023 on its new Appendix to the Pensions Rules for Occupational Retirement Schemes in line with EIOPA's decision on regular information requests towards national competent authorities regarding the provision of occupational pensions information with the aim of

updating and affecting changes to taxonomy releases.

3.4 Update to the Nature and Art of Financial Supervision – Conduct Supervision – The Demands and Needs Assessment

The MFSA issued a [Circular](#) on 10 May 2023, providing an update to the nature and art of Financial Supervision with regards to the Demands and Needs Assessment which was originally issued on 24 May 2022 (**‘the May 2022 Circular’**).

The amendments to the Demands and Needs Assessment are intended to clarify that the May 2022 Circular provides guidance and outlines the best practices which insurance distributors should use when carrying out the assessment in order to ensure that their clients are offered the best product which meets their particular demands and needs.

3.5 MFSA issues Feedback Statement on the Amendments to the Insurance Business Act and the Insurance Distribution Act

The MFSA issued a [Feedback Statement](#) on 15 May 2023, following an internal discussion about the comments which were raised by the market on the proposed amendments to the Insurance Business Act (**‘IBA’**) and to the Insurance Distribution Act (**‘IDA’**).

Most of the amendments proposed in the [Consultation document](#) were welcomed by the market.

The MFSA is currently seeking approval from the Parliament of Malta to amend the IBA and IDA accordingly. The

amendments to the IBA and IDA will require going through the parliamentary process in order to become law.

3.6 MFSA issues a Circular on the Publication of a New Application for the Incorporation of Cells

On 17 May 2023, the MFSA published a new application for the incorporation of Cells, being [Form AA42](#). Form AA42 previously formed part of Form AA12; however, the two have now been separated in order to make the application process simpler.

From 16 June 2023, the MFSA will only accept Form AA42 and Form AA12 separately, both of which should be submitted through the MFSA [LH Portal](#).

3.7 MFSA issues a Circular on amendments to references to the Conduct of Business Rulebook as laid down in the Annexes to Chapter 9 of the Insurance Rules and the Annexes to Chapter 16 of the Insurance Distribution Rules

On 25 May 2023, the MFSA issued a [Circular](#) on the amendments which were carried out in order to clarify the references to the Rules of the Conduct of Business Rulebook which are found in Annexes 1 and 2 of Chapter 9 of the Insurance Rules and in Annex 1 and 2 of Chapter 16 of the Insurance Distribution Rules.

These amendments seek to ensure that the references contained in such Annexes are aligned with the latest version of the Conduct of Business Rulebook.

4.0 COMPANY SERVICE PROVIDERS

4.1 Legal Entity Identifier

On 18 April 2023, the MFSA issued a [Circular](#) addressed to the financial services industry.

The MFSA reminded licence holders of the requirement to obtain a Legal Entity Identifier code, where applicable. The MFSA even reminded licence holders of their responsibility to ensure that all the data that is made available on the MFSA LH Portal is kept up-to-date and must be properly maintained.

CROSS-SECTORAL REGULATORY UPDATES

5.0 DIGITAL FINANCE

5.1 First Set of Technical Standards under Regulation (EU) 2022/2554 on Digital Operational Resilience for the Financial Sector

On 22 June 2023, the MFSA issued a [Circular](#) informing the public that the first set of technical standards drafted by the European Supervisory Authorities are now open for public consultation.

Interested stakeholders are invited to provide their feedback on the first set of technical standards by 11 September 2023.

6.0 SUSTAINABLE FINANCE

6.1 Sustainable Finance Disclosure Regulation ('SFDR')

On 14 April 2023, the European Supervisory Authorities published the final [Q&As](#) on the legal interpretation of the SFDR. Financial market participants and financial advisors are encouraged to familiarise themselves with the information found in the Q&A document given that the Q&A document ensures consistency in the interpretation thereof.

6.2 Sustainable Finance Package

On 13 June 2023, the European Commission published its [Sustainable Finance Package](#). The aim behind this package is to ensure that the EU sustainable finance framework continues to support companies and the financial sector whilst encouraging the private funding of transition projects and technologies. It even aims to make the sustainable finance framework easier to use, thereby continuing to effectively contribute to the European Green Deal objectives.

6.3 Sustainability-Related Disclosures

On 12 April 2023, the MFSA issued the latest edition of [The Nature and Art of Financial Supervision publication](#) series. Amongst others, the MFSA emphasised the importance of environmental, social, and governance disclosures in financial market activities, for investors to make better informed decisions.

The publication outlines the findings of a supervisory analysis carried out by the MFSA to assess compliance with the SFDR requirements. Amongst others, the MFSA noted that there was a significant room for improvement in the quality and depth of disclosures, as well as in their ease of accessibility on the websites of licensed entities. The MFSA expects

entities to consider the observations set out in this [publication](#) when implementing the requirements of the SFDR.

7.0 REGULATORY

7.1 MFSA issues Feedback Document on the New Publication Policy

On 16 June 2023, the MFSA issued a [Feedback Document](#) on the new [Publication Policy](#) issued in response to the [Consultation document](#) on the establishment of a Publication Policy.

The Feedback Document includes various comments made by the market and the MFSA's position in response thereto.

Future updates and events

Should you be interested in receiving our Quarterly Regulatory Compliance Update in relation to regulatory developments and/or joining future events organised by Mamo TCV on regulatory & compliance matters, we invite you to subscribe to our dedicated mailing list through the following link: [subscribe here](#).

Our Regulatory Compliance Services

Having a strong compliance culture is crucial and our multidisciplinary regulatory cross-sectoral compliance team assists our clients in having the required policies and procedures to remain compliant with the local regulatory framework, as well as providing advice with respect to any changes required to their business

model to better comply with the relevant requirements. Our team also delivers tailor-made training sessions to staff of regulated entities.

Key Contacts

Do not hesitate to reach out to **Michael Psaila, Katya Tua, Edmond Zammit Laferla**, or your usual contacts at Mamo TCV, should you wish to discuss the contents of this Regulatory Compliance Quarterly Update or any other financial services regulatory compliance matters.

This document does not purport to give legal, regulatory, financial or tax advice.

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