

24 December 2020

## Amendments to Chapter 5 and Chapter 8 of the Listing Rules – Implementation of ESEF requirements

### 1.0 Introduction

On 06 November 2013, Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013, amending Directive 2004/109/EC of the European Parliament and of the Council (hereinafter referred to as the “Transparency Directive” or the “Directive”)<sup>1</sup>, was published on the Official Journal of the European Union. In this regard, pursuant to Article 4(7), the Transparency Directive prescribes that, “*With effect from 1 January 2020 all annual financial reports shall be prepared in a single electronic reporting format...*”. Furthermore, Article 4(7) of the Directive includes that, “*ESMA shall develop draft regulatory technical standards to specify the electronic reporting format...*”.

On 18 December 2017, the European Securities and Markets Authority (“ESMA”) published its final draft Regulatory Technical Standards (“RTS”), setting out the new European Single Electronic Format (“ESEF”). Subsequently, on 17 December 2018, [Commission Delegated Regulation \(EU\) 2019/815](#)<sup>2</sup> (hereinafter referred to as the “ESEF RTS”) was published. The ESEF RTS applies to all issuers subject to the Transparency Directive requirements to make the Annual Financial Reports (“AFRs”) public and contains detailed provisions on ESEF. The requirements prescribed by the ESEF RTS primarily relate to the format of the AFR as follows:

- Article 3 of the ESEF RTS states that, “*Issuers shall prepare their entire annual financial reports in XHTML format.*”;
- Article 4 (1) of the ESEF RTS states that, “*Where annual financial reports include IFRS consolidated financial statements, issuers shall mark up those consolidated financial statements.*”;
- Other Articles and sub-articles set out detailed requirements on the marking up of AFRs;
- Article 8 of the ESEF RTS states that, “*It [the Regulation] shall apply to annual financial reports containing financial statements for financial years beginning on or after 1 January 2020.*”; and
- Annex I to Annex VI as referred to in the ESEF RTS.

In order to update the Listing Authority Listing Rules in line with the ESEF RTS requirements, additions and amendments have been reflected in the Definitions section, Chapter 5 and Chapter 8 of the Listing Rules. It is noted that the update to the Listing Rules represents additions to already existing obligations. Some of the main changes incorporated in Chapter 5 and Chapter 8 address an update

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<sup>1</sup> Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC.

<sup>2</sup> Commission Delegated Regulation (EU) 2019/815 of 17 December 2018 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to regulatory technical standards on the specification of a single electronic reporting format, as may be further amended from time to time.

to the AFR requirements, specifically through the additional reference to the ESEF RTS. Moreover, the Listing Rules on the audit of the financial statements have been updated to refer to the relevant national legislation.

## 2.0 Effective Date of application of ESEF requirements

Kindly note that as part of the [Capital Markets Recovery Package in response to COVID-19](#)<sup>3</sup>, the Council of the European Union put forward a proposal to provide Member States with the option to postpone, by one year, the requirement for Issuers to prepare annual financial reports in ESEF for financial years beginning on or after 1 January 2020.

In this respect, as per the [Press Communication by the European Commission](#) dated 11 December 2020, a provisional political agreement had been reached *inter alia* with regards to the option by Member States to postpone the application of the respective ESEF requirements by one year, with the relevant extract provided as follows,

### QUOTE

*"The European Parliament and the Council also agreed today [11 December 2020] to an amendment of [the Transparency Directive](#) allowing Member States to delay by one year the application of the European Single Electronic Format (ESEF) requirements for listed companies' annual financial reports, provided that they notify the Commission of their intention to do so, and of their sufficiently justified reasons. Listed companies who wish to publish their ESEF annual financial reports in 2021 will still be able to proceed. The amendments will apply 20 days after publication in the Official Journal of the European Union."*

### UNQUOTE

On 16 December 2020, further to the provisional agreement, [EU ambassadors, on behalf of the Council, endorsed the targeted amendments](#)<sup>4</sup> to the European Union capital markets rules as part of the Capital Markets recovery package, in support of economic recovery from the COVID-19 pandemic.

In view of the above-mentioned final agreement by the EU ambassadors on 16 December 2020, the Listing Authority has decided that once the European Parliament and the Council formally adopt the respective amendments, Listing Rule 5.56A and Listing Rule 8.114.6 will be subsequently amended to allow Issuers to delay by one (1) year the application of the ESEF requirements, and to prepare the Annual Financial Report in ESEF for financial years beginning on or after 1 January 2021. Nonetheless, Issuers who wish to publish their annual financial reports in ESEF, for financial years starting on or after 1 January 2020, for publication in 2021, will still be able to proceed accordingly.

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<sup>3</sup> 2020/0155 (COD), Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2017/1129 as regards the EU Recovery prospectus and targeted adjustments for financial intermediaries and Directive 2004/109/EC as regards the use of the single electronic reporting format for annual financial reports, to help the recovery from the COVID-19 pandemic.

Following the aforementioned formal adoption of the amendments, Listing Rule 5.56A would be subsequently amended as follows:

QUOTE

5.56A *Without prejudice to Listing Rule 5.56, with effect from 1 January 2020 all Annual Financial Reports containing financial statements for financial years beginning on or after 1 January 2020 may be entirely prepared in a single electronic reporting format.*

*Provided that with effect from 1 January 2021 all Annual Financial Reports containing financial statements for financial years beginning on or after 1 January 2021 shall be entirely prepared in a single electronic reporting format.*

UNQUOTE

Moreover, Listing Rule 8.114.6 would be subsequently amended as follows:

QUOTE

8.114.6 *Without prejudice to any of the above, with effect from 1 January 2020 all Annual Financial Reports containing financial statements for financial years beginning on or after 1 January 2020 may be entirely prepared in a single electronic reporting format.*

*Provided that with effect from 1 January 2021 all Annual Financial Reports containing financial statements for financial years beginning on or after 1 January 2021 shall be entirely prepared in a single electronic reporting format.*

UNQUOTE

Please be advised that the application of the requirement to mandatorily mark up notes to annual financial statements for financial years beginning on or after 1 January 2022, shall remain unchanged.

### 3.0 Details of the Amendments

Following the ESEF RTS, as a supplement to the Transparency Directive, the Listing Authority (hereinafter also referred to as the "Authority") presents the amendments passed in the Listing Rules, specifically in the Definitions Section, Chapter 5 and Chapter 8 of the Listing Rules (Listing Rules are in italics while the amendments are in italics and bold).

#### 3.1 Amendments to the Definitions Section

The Authority has included a new definition to define "Accountancy Profession Act". The said definition was included for the purpose of making the relevant reference in the Listing Rules prescribing the audit of the financial statements.

<i>Accountancy Profession Act</i>	<i>Accountancy Profession Act 1987 (Cap. 281 of the Laws of Malta).</i>
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The Authority has included a new definition to define “Commission Delegated Regulation (EU) 2019/815”. The said definition was included for the purpose of making the relevant reference to the ESEF RTS and the corresponding requirements in the Listing Rules prescribing the preparation of the AFR. In this regard, all requirements prescribed by the ESEF RTS are directly applicable for Issuers in addition to the existing continuing obligations prescribed by the Listing Rules.

<i>Commission Delegated Regulation (EU) 2019/815</i>	<i>Commission Delegated Regulation (EU) 2019/815 of 17 December 2018 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to regulatory technical standards on the specification of a single electronic reporting format as may be further amended from time to time.</i>
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The Authority has deleted and replaced the definition of “European Single Electronic Format” with a new definition for “Single electronic reporting format”. The said definition provides that the single electronic reporting format is specified by the ESEF RTS.

<i>Single electronic reporting format</i>	<i>The single electronic reporting format as specified by Commission Delegated Regulation (EU) 2019/815 as may be further amended from time to time.</i>
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The Authority has included a new definition to define “Validation”. The said definition was included for the purpose of making the relevant reference in the Listing Rules prescribing the Issuers’ obligation in publishing the AFR.

<i>Validation</i>	<i>Process of checking that the Annual Financial Report meets the applicable requirements in terms of Commission Delegated Regulation (EU) 2019/815 and other requirements as may be applicable.</i>
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### 3.2 Amendments to Chapter 5

Listing Rules in Chapter 5 have been amended as outlined below.

#### [A] Listing Rule 5.55 – 5.56B – Annual Financial Report

With the requirements emanating from the ESEF RTS being considered as “statutory requirements” within the meaning of Article 28(2)(c)(ii) of the Audit Directive, Listing Rule 5.55 was amended through the addition of Listing Rule 5.55.6. Listing Rule 5.55.6 refers to the inclusion of the auditors’ report on the compliance by the Issuer with the ESEF RTS, in the Annual Financial Report, depending on the date of application of the ESEF requirements set out in the amended Listing Rule 5.56A.

QUOTE

- 5.55 *The Annual Financial Report shall include:*
- 5.55.1 *the annual financial statements together with the Directors' Report or equivalent report and the auditors' report thereon;*
  - 5.55.2 *a statement of responsibility, provided that the requirement to include such a statement shall apply to Annual Financial Report relating to financial periods commencing on or after 1 January 2007;*
  - 5.55.3 *a report by the Directors on the compliance by the Issuer with the Code of principles for Good Corporate Governance as required by Listing Rule 5.97;*
  - 5.55.4 *the information prescribed by Listing Rule 5.70;*
  - 5.55.5 *a report by the auditors on the compliance by the Issuer with the Code of principles for Good Corporate Governance; and*
  - 5.55.6 *a report by the auditors on the compliance by the Issuer with the single electronic reporting format as referred to in Listing Rule 5.56A.*

UNQUOTE

The addition to Listing Rule 5.56, below, was necessary in order to include reference to the AFR's validation prior to its publication. It should be noted that all other existing obligations, including the timeframe for publication, as stipulated by the Transparency Directive, have remained unchanged.

QUOTE

- 5.56 *An Issuer must ensure that its Annual Financial Report is made available to the public as soon as it has been approved by the Directors. The Annual Financial Report shall be approved, lodged with the Listing Authority for Validation in terms of Listing Rule 5.56A, and made available to the public by not later than four (4) months after the end of each financial year, and shall remain publicly available for a period of at least ten (10) years.*

UNQUOTE

Listing Rule 5.56A was amended to clarify the applicability of the ESEF RTS requirements. Prior to the amendments, Listing Rule 5.56A was as follows:

QUOTE

- 5.56A *With effect from 1 January 2020 all annual reports shall be prepared in a single electronic reporting format.*

UNQUOTE

The amended Listing Rule 5.56A is:

QUOTE

5.56A *Without prejudice to Listing Rule 5.56, with effect from 1 January 2020 all Annual Financial Reports containing financial statements for financial years beginning on or after 1 January 2020 shall be entirely prepared in a single electronic reporting format.*

UNQUOTE

A new Listing Rule 5.56B, below, has been included in order to specify that, as from the effective financial years, an AFR that is not prepared in line with the Listing Rule 5.56A is not considered to be in compliance with the Listing Rules.

QUOTE

5.56B *An annual financial report that is not prepared in accordance with Listing Rule **5.56A shall not be deemed to satisfy the definition of “Annual Financial Report” and “Regulated Information” as defined by the Listing Rules.***

UNQUOTE

[B] Listing Rule 5.71 – 5.73 – Audit report on the financial statements

A new Listing Rule 5.71A, below, has been added to clarify that the audit requirements of the financial statements shall *inter alia* also include the audit requirements relating to the ESEF RTS as may be prescribed by the Accountancy Board in terms of the Accountancy Profession Act.

QUOTE

5.71A *“Without prejudice to Listing Rule 5.71, the financial statements shall be audited in accordance with the Accountancy Profession Act or the rules and **directives issued under it.**”*

UNQUOTE

### 3.3 Amendments to Chapter 8

Listing Rules in Chapter 8 have been amended with respect to closed ended collective investment schemes as outlined below.

#### [A] Listing Rule 8.114 – Financial Information – Annual Financial Report

The addition to Listing Rule 8.114, below, was necessary in order to include reference to the AFR's validation prior to its publication. It should be noted that all other existing obligations, including the timeframe for publication, as stipulated by the Transparency Directive, have remained unchanged.

#### QUOTE

8.114 *A Scheme shall publish and make available to the public its Annual Financial Report within four (4) months of the end of the Financial Year to which it relates. The Scheme shall on request and free of charge also send to Unit holders an Annual Financial Report within four (4) months of the end of the financial period to which it relates. The Scheme shall ensure that the Annual Financial Report remain public for at least 10 years.*

*The Annual Financial Report, one (1) copy of which shall be lodged with the Listing Authority for Validation in terms of Listing Rule 8.114.6, at the earliest opportunity but in any event within four (4) months of the end of the financial period to which they relate, shall contain at least all the information required to be put in such a Report by the MFSA as well as any other significant information necessary to enable investors to make an informed judgment on the progress of the Scheme and its results.*

#### UNQUOTE

The addition to Listing Rule 8.114.2, below, clarifies that the audit requirements of the financial statements shall *inter alia* also include the audit requirements relating to the ESEF RTS as may be prescribed by the Accountancy Board in terms of the Accountancy Profession Act.

#### QUOTE

*In addition, the Report shall:*

8.114.1 *have been prepared in accordance with the laws of Malta and in all material aspects with International Financial Reporting Standards;*

8.114.2 *have been independently audited and reported on in accordance with the International Standards on Auditing as promulgated by the International Federation of Accountants, and with the Accountancy Profession Act or the rules and directives issued under it as applicable;*

UNQUOTE

A new Listing Rules 8.114.6 was added in order to specify that the AFR of closed ended collective investment schemes shall be prepared in an electronic reporting format as per the ESEF RTS and its requirements.

QUOTE

8.114.6 *Without prejudice to any of the above, with effect from 1 January 2020 all Annual Financial Reports containing financial statements for financial years beginning on or after 1 January 2020 shall be entirely prepared in a single electronic reporting format.*

UNQUOTE

A new Listing Rule 8.114A, below, has been included in order to specify that, as from the effective financial years, an AFR by a closed ended collective investment scheme that is not prepared in line with the Listing Rule 8.114.6 is not considered to be in compliance with the Listing Rules.

QUOTE

8.114A *An annual financial report that is not prepared in accordance with Listing Rule **8.114.6 shall not be deemed to satisfy the definition of “Annual Financial Report” and “Regulated Information” as defined by the Listing Rules.***

UNQUOTE

#### 4.0 Amended Listing Rules

The Revised Listing Rules are annexed to this Circular.

#### 5.0 Other Information

##### 5.1 Supporting Material

To facilitate the implementation of ESEF, ESMA has *inter alia* published additional guidance and supporting material:

- A [dedicated section on its website](#) facilitates comprehension of the ESEF RTS requirements;
- The [ESEF Reporting Manual](#) assists market participants in creating Inline XBRL documents by providing guidance on the common issues encountered;



- The [ESEF XBRL Taxonomy files](#)<sup>5</sup> constitute the core taxonomy, which is based on the International Financial Reporting Standards (“IFRS”) Taxonomy; and
- The [ESEF Conformance Suite](#)<sup>6</sup> helps to determine whether the software tool being used to create and/or consume filings can detect and flag noncompliance with the ESEF requirements.

Additional supporting material has also been published by the IFRS Foundation in relation to the IFRS Taxonomy. In this regard, apart from a [general page on useful resources](#), there is also a [guide specific for preparers](#).

Furthermore, the Malta Financial Services Authority (“MFSA”) has been communicating salient updates in relation to ESEF on an ongoing basis through a [dedicated section on its website](#). The MFSA’s website *inter alia* includes [explanatory Circulars](#), [links to supporting documentation](#), and [FAQs documents](#).

## 5.2 2020 Amendment to the ESEF RTS

Reference is made to the [Authority’s Circular](#) dated 22 June 2020<sup>7</sup>, whereby it was communicated that ESMA had published the [Final Report on the draft amendments to the ESEF RTS](#).

In this regard, kindly be informed that the 2020 Amendment to the RTS on ESEF was published in the Official Journal of the European Union on 18 December 2020, by way of [Commission Delegated Regulation \(EU\) 2020/1989](#)<sup>8</sup>.

## 5.3 The Use of Electronic Signatures

Reference is made to the signatures to be used by Issuers for AFRs prepared in ESEF. In this regard, by way of guidance, the Authority would like to draw your attention to the [Notice on the use of Electronic Signatures](#) as issued by the [Malta Business Registry](#) on 26 October 2020, an extract of which can be referred to as follows,

QUOTE

*“For an electronic signature to have the equivalent legal effect of a handwritten signature, it must be a qualified electronic signature, as provided by Article 25(2) of the eIDAS.”*

UNQUOTE

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<sup>5</sup> The link provided redirects users to the 2019 ESMA ESEF Taxonomy, which Taxonomy may be amended from time to time to reflect the necessary updates accordingly. In this respect, on 07 December 2020, ESMA published the [2020 ESEF XBRL taxonomy files](#).

<sup>6</sup> On 07 December 2020, ESMA published an update to the [ESEF Conformance Suite](#).

<sup>7</sup> MFSA Circular – ESMA integrates 2020 IFRS taxonomy into ESEF RTS, dated 22 June 2020.

<sup>8</sup> Commission Delegated Regulation (EU) 2020/1989 of 6 November 2020, amending Delegated Regulation (EU) 2019/815 as regards the 2020 update of the taxonomy laid down in the regulatory technical standards for the single electronic reporting format.

#### 5.4 Further Guidance

The MFSA shall be publishing further guidance as necessary in due course. Specific guidance shall be provided by the MFSA in relation to the lodging, for the purpose of validation, of the AFR with the Listing Authority, and the corresponding process that issuers would be requested to follow. Additional information, for clarification purposes, shall also be provided on other matters including, but not limited to, the upload environment, the marking up of financial statements and the relative impact on the Company Announcement wherein the publication of the AFR is announced.

#### Contacts

Any queries or request for clarifications in respect of the above should be submitted on email address [esef.malta@mfsa.mt](mailto:esef.malta@mfsa.mt).