

## CHAPTER 8

### Admissibility requirements for Collective Investment Schemes

## *General*

- 8.1 This Chapter sets out the requirements for the Admissibility to Listing of Units in Collective Investment Schemes (open ended and closed ended) whether established in Malta or outside the territory of Malta. Applications will be considered in respect of both existing and newly formed Schemes, whether these are established as single-class funds or umbrella funds.

Section I of this Chapter deals with the Application Procedures and Requirements to be complied with by open ended Schemes seeking authorisation for Admissibility for Listing but which are not meant for trading on the Regulated Market.

Section II deals with the Continuing Obligations of open ended Schemes authorised as Admissible for Primary Listing but which are not traded on the Regulated Market.

Section III deals with the Continuing Obligations of open ended Schemes authorised as Admissible for Secondary Listing but which are not traded on the Regulated Market.

Section IV of this Chapter deals with the Application Procedures and Requirements that shall be complied with by closed ended Schemes seeking authorisation for Admissibility for Listing.

Section V deals with the Continuing Obligations of closed ended Schemes authorised as Admissible for Listing.

- 8.2 In order to qualify for a listing, a scheme shall be duly licensed by the Malta Financial Services Authority pursuant to the provisions of the Investment Services Act, or duly notified to the Malta Financial Services Authority in terms of the relevant regulations issued thereunder, or established in a Recognised Jurisdiction. For the purpose of this Chapter of the Capital Markets Rules, Recognised Jurisdiction shall be construed as including the following:

- a. EU Member States
- b. EEA Member States
- c. Signatories to a multilateral Memorandum of Understanding covering the securities sector, to which the MFSA is a signatory;
- d. Signatories to a bilateral Memorandum of Understanding with the MFSA covering the securities sector

In the case of [c] and [d] above, such jurisdiction must have appropriate legislative measures for the establishment and regulation of collective investment schemes. For this purpose, account will be taken of that country's membership of any international organisation recognised as laying down internationally accepted standards for the regulation of collective investment schemes such as the International Organisation of Securities Commissions.

- 8.3 In cases involving new Applicants for authorisation for Admissibility to Listing or the existence of exceptional circumstances, applicants are encouraged to contact the MFSA at the earliest opportunity prior to listing to seek informal guidance as to the authorisation for Admissibility to Listing of a particular Scheme. Such guidance will be treated by the MFSA in strict confidence.

- 8.4 The MFSA requires every application for the authorisation for Admissibility to Listing of any such Scheme to be supported by a Prospectus. For the purpose of this Chapter, the term Prospectus shall be construed as also referring to an offering memorandum.

- 8.5 All the requirements in this Chapter will apply to every application for the authorisation for Admissibility to Listing of a new class of Unit in a Scheme where such a Scheme has already been previously authorised for Admissibility to Listing, as if it were a new Applicant.

## **Section I - Application Procedures and Requirements for open ended Schemes seeking Authorisation for Admissibility for Listing**

### *Preliminary*

- 8.6 All Applicants shall appoint a Sponsor in accordance with the requirements of Chapter 2 of the Capital Markets Rules. Besides fulfilling the obligations laid down in Chapter 2, the Sponsor will be responsible for preparing the applicant for authorisation for Admissibility to Listing and for dealing with the MFSA on all matters arising in connection with the application.
- 8.7 When considering an application for authorisation for Admissibility to Listing, the MFSA reserves the right to assess each case on its own merits.

### *Conditions to be fulfilled by a Scheme seeking authorisation for Admissibility for Listing*

- 8.8 The following conditions shall be fulfilled by a Scheme:
- 8.8.1 The Units offered by the Scheme shall be freely transferable.
- 8.8.2 The number of Directors of a Scheme shall at least be one (1). In order to ensure the protection of investors at least one Director shall be independent of the Manager or of any Investment Adviser to the Scheme or of any affiliated entity.
- 8.8.3 Corporate Directors are not eligible, unless the Corporate Director is the Manager of the Scheme. The Corporate Director shall not be the sole director of the Scheme.
- 8.8.4 A Scheme shall adopt rules governing dealings by Directors which will preclude them from dealing in the listed Units of the Scheme at a time when they are in possession of price-sensitive information.
- 8.8.5 Copies of the Directors' service contracts, if any, shall be made available to the general public for inspection at the time of the Annual General Meeting (AGM) of the Scheme.
- 8.8.6 Any other activity of the Directors, Manager or Investment Adviser should not result in the Scheme being disadvantaged in any way due to possible conflicts of interest between their obligations arising as a result of such activities and their obligations to the Scheme.
- 8.8.7 Directors and proposed Directors, and in the case of a Unit Trust, the Directors of the Manager, will be personally responsible for the information contained in the Prospectus.
- 8.8.8 The Directors of the Scheme, and the Manager, shall acknowledge to the MFSA in writing that they accept full responsibility collectively and individually for the Scheme's compliance with all the MFSA's requirements and continuing obligations, whether in terms of these Capital Markets Rules or otherwise.

*Formal Application for Authorisation for Admissibility for Listing*

- 8.9 A formal application for authorisation for Admissibility to Listing in accordance with the application form in Appendix 8.1 shall be lodged with the MFSA at least five (5) Business Days prior to the date of hearing of the application by the MFSA. The following requirements shall also be satisfied:
- 8.9.1 the application form shall be duly completed and signed by a duly authorised representative of the Scheme and the Sponsor; and
  - 8.9.2 in the case of any other form of Collective Investment Scheme, the form shall also be signed by a duly authorised Officer for and on behalf of the Scheme and, if appropriate, the management Company.
- 8.10 The Formal Application shall be accompanied by the following documents:
- 8.10.1 one (1) copy of the Prospectus marked in the margin to indicate where the relevant requirements in this Chapter have been met; and
  - 8.10.2 *Omissis*
  - 8.10.3 CVs of the Directors of the Scheme;
  - 8.10.4 Constitutional Documents of the Scheme;
  - 8.10.5 Audited accounts of the Scheme for the last three years where available;
- The documents referred to in 8.10.3 to 8.10.5 need not be submitted in the case of schemes licensed by the MFSA or which have applied for a licence apart from admissibility to listing as well as in the case of Schemes marketing their Units in Malta in terms of the Investment Services Act (Undertakings for Collective Investment in Transferable Securities and Management Companies Regulations), 2004.
- A Scheme applying for admissibility to Secondary Listing, must satisfy the MFSA that it is in compliance with the requirements pertaining to its primary Listing and that its Directors are held in good-standing by the competent authority in the jurisdiction where it has a Primary Listing. In satisfaction of this condition the applicant shall provide the MFSA with a declaration to this effect from the relevant competent authority.
- 8.11 The Sponsor shall communicate to the MFSA any event or arrangement of which he is aware, and which, in his/her opinion, is relevant to the authorisation for Admissibility of the Scheme to listing or if the Sponsor is not aware of any such event or arrangement, an appropriate negative statement to this effect.
- 8.12 When a formal application for authorisation for Admissibility to Listing under this section is made to the MFSA the MFSA shall consider such application for authorisation for Admissibility to Listing after licensing by the MFSA of the collective investment scheme.
- 8.13 The MFSA shall notify the Applicant of its decision to accept or refuse an application for Admissibility to Listing:
- 8.13.1 before the end of the period of twenty (20) days beginning with the date on which the application is received; or
  - 8.13.2 if within that period the MFSA has required the applicant to provide further information in connection with the application, before the end of the period of twenty (20) days beginning with the date on which that information is provided.
- 8.14 The Scheme shall comply at all times with the provisions of its constitutional documents, including its investment, borrowing and leverage restrictions (if any).

### *Prospectus*

- 8.15 Except in the case of schemes established in a Recognised Jurisdiction, every Prospectus submitted to the MFSA by or on behalf of the Scheme in support of an application for authorisation for Admissibility to Listing, shall be drawn in compliance with the requirements of the applicable Investment Services Rules issued by the MFSA in terms of the Investment Services Act. The prospectus of a scheme established in a Recognised Jurisdiction shall be drawn up in compliance with the requirements of the Recognised Jurisdiction and with any additional disclosure requirements which the MFSA may require as part of its licensing requirements when it is to be marketed in Malta. The prospectus of all schemes seeking admissibility to listing shall also contain:
- 8.15.1 a statement that application has been made to a Regulated Market for Admission to Listing, of the Units issued or to be issued by the Scheme;
  - 8.15.2 the name of the Regulated Market on which the primary listing is or is to be made;
  - 8.15.3 particulars of any other Regulated Market on which any of the Units are listed or dealt in or where listing or permission to deal is being sought or an appropriate negative statement; and
  - 8.15.4 particulars of any Regulated Market where the Scheme had previously sought a listing but had been refused and the reasons for such a refusal.

The Prospectus shall be accompanied by a letter signed by every Director of the Scheme confirming that the Prospectus includes all such information within their knowledge (or which it would be reasonable for them to obtain) that investors and their professional advisers would reasonably require and reasonably expect to find for the purpose of making an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the Scheme and of the rights attaching to the units to which the Prospectus relates.

- 8.16 Where during the process of authorisation any document is amended after submission, a copy of the amended document shall be submitted to the MFSA for review, marked in the margin to indicate where the relevant items for the Admissibility requirements have been complied with in respect of the amendments. The copy shall also be marked in the margin to indicate any amendments introduced in order to conform with points raised by the MFSA.
- 8.17 The Prospectus and supplements shall require the formal approval of the MFSA. No amendment to the authorised Prospectus will be allowed without the consent of the MFSA. The Prospectus shall not be published unless they are formally authorised by the MFSA in their final form in accordance with these Capital Markets Rules.
- 8.18 Each copy of the prospectus shall contain an application form which may be used by investors to apply for the Units to be offered.

### *General Provisions*

- 8.19 A Scheme shall include in its Prospectus any holdings of its Units registered in the name of any one of its Directors, his/her spouse or minor children or of any person connected with the Director.
- 8.20 Open ended Schemes are exempt from the MFSA's requirements regarding purchase of own units.

*Supplementary Prospectus*

- 8.21 The MFSA may require the publication of further information by and impose additional requirements on a listed Scheme either specifically or generally through the publication of a Supplementary Prospectus. The Scheme shall comply with such requirements and, in case of default, the MFSA may take any steps that may consider appropriate in accordance with the Financial Markets Act.

*Disclaimer*

- 8.22 Every Prospectus and Supplements thereto required pursuant to this Chapter 8 shall contain on the front cover of the Document a prominent and legible disclaimer as follows:

“The MFSA accepts no responsibility for the accuracy or completeness of this document and expressly disclaims any liability whatsoever for any loss howsoever arising from or in reliance upon the whole or any part of the contents of this document.”

## **Section II - Continuing Obligations of Open ended Schemes Authorised as Admissible for Primary Listing**

### *General Obligation of Disclosure*

- 8.23 Every Scheme applying for authorisation for Admissibility to Primary Listing is required to comply with the continuing obligations as set out in this Section II of this Chapter and to which they would be subject as a condition of the Authorisation for Admissibility to Listing of the Units in the Scheme except insofar as the Scheme is specifically exempt from any such obligations by the MFSA.
- 8.24 The MFSA may be prepared to dispense with, vary or not require compliance with any of the continuing obligations to suit the circumstances of a particular case. Any such dispensation, variation or concession shall be signified to the Applicant or Issuer by the MFSA in writing.
- 8.25 Generally, and apart from compliance with all specific requirements which follow, any information necessary to enable holders of the Scheme's Units authorised as admissible to Listing as well as the general public to appraise the financial position of the Scheme and to avoid the creation of a false market in such Units, shall be made known to the MFSA. Such information shall not normally be passed on to a third party other than its Manager, custodian and advisers prior to it being communicated to the MFSA.
- 8.25.1 A Scheme, its management Company, its custodian and its advisers, may give information concerning the Scheme in strict confidence to outside advisers and to persons with whom it is negotiating with a view to the raising of finance. Information required by and provided in confidence to and for the purposes of a regulatory authority, need not be communicated to the MFSA unless so required by the MFSA.
- 8.25.2 Where it is being proposed to announce information which might affect the market price of the Scheme's Units that have been authorised as admissible to Listing at any meeting of holders of those Units, or any class thereof, arrangements shall be made with the Regulated Market so that an announcement is immediately made known to the market.
- 8.25.3 A Scheme shall give notice to the MFSA of any major new developments in its sphere of activity which are not yet public knowledge and which, by virtue of their effect on its assets and liabilities or financial position or on the general course of its business, may lead to substantial movements in the price or value of its Units.
- 8.25.4 The Scheme shall update its Prospectus whenever there are material changes in the contents or when the MFSA so requires. Every subsequent Prospectus issued by or on behalf of the Scheme shall contain a statement that the Units which have already been issued are authorised as Admissible to Listing.

### *Continuing Obligations relating to Capital and Management*

- 8.26 The Scheme shall immediately notify the Regulated Market where it is listed of the following:
- 8.26.1 the net asset value and net asset value per share, when calculated;
  - 8.26.2 any suspension in the calculation of net asset value or in the process of redemption;
  - 8.26.3 any change in the status of the Scheme for taxation purposes;
  - 8.26.4 any changes in the capital structure of the Scheme; and
  - 8.26.5 any other information necessary to enable Unit holders to appraise the position of the Scheme and to avoid the establishment of a false market in its Units including changes to the Directors or any service providers of the Scheme.

### *Rights as between Holders*

- 8.27 A Scheme having Units of different classes in issue, any of which classes have been authorised as Admissible to Listing, shall ensure identical treatment of all holders in the same position (e.g. in the same class).

### *Communications with Holders*

- 8.28 A Scheme shall ensure that all the necessary facilities and information are available to enable holders of its Units to exercise their rights. In particular, it shall inform such holders of the holding of meetings which they are entitled to attend, enable them to exercise their right to vote where applicable and publish notices or distribute circulars giving details of the allocation and payment of dividends or interest or otherwise in respect of such Units.
- 8.29 Whenever holders are sent a notice of a meeting which includes any business other than Ordinary Business at an Annual General Meeting, an explanatory circular shall accompany the notice or, if the business is to be considered at or on the same day as an Annual General Meeting, an explanation shall be incorporated in the Directors' report. Drafts of these documents should be submitted to the MFSA in advance of the issue to holders.
- 8.30 If appropriate, a proxy form shall be sent with the notice convening the meeting of holders of listed Units to each person entitled to vote at the meeting.
- 8.31 In the event of a Circular being issued to the holders of any particular class of Unit, the Scheme shall issue a copy or summary of such Circular to the holders of all other classes of Units unless the contents of such Circulars are manifestly irrelevant to such other holders.

### *Miscellaneous Obligations*

- 8.32 Any decision to pay or make any dividend or other distribution on Units authorised as Admissible to Listing or to pass any interest payment or dividend on Units authorised as Admissible to Listing or any other decision requiring announcement shall be communicated to the Regulated Market immediately after board authorisation.
- 8.33 A Scheme shall make appropriate arrangements to facilitate the efficient settlement of all transfers and registration of the Units as appropriate.



- 8.34 If a Scheme proposes to enter into a transaction with a Related Party, the Scheme is required to obtain the authorisation of its members prior to the transaction unless such transactions have been identified and described in the Prospectus.

*Financial Information: Annual Report and Accounts*

- 8.35 A Scheme shall, publish and make available to the public an Annual Report and Audited Accounts within four (4) months of the end of the financial period to which they relate. The Scheme shall on request and free of charge also send to Unit holders the Annual Report and Audited Accounts within four (4) months of the end of the financial period to which they relate.

The Annual Report shall be lodged with the MFSA at the earliest opportunity but in any event within four (4) months of the end of the financial period to which it relates.

In addition, the Report shall:

- 8.35.1 have been prepared in accordance with International Financial Reporting Standards or any other recognised international reporting standards;
- 8.35.2 have been independently audited and reported on in accordance with the International Standards on Auditing as promulgated by the International Federation of Accountants;
- 8.35.3 be in consolidated form if the Scheme operates as an umbrella fund unless otherwise authorised by the MFSA;
- 8.35.4 include the following :
  - 8.35.4.1 the information necessary to enable holders of the Scheme's Units authorised as Admissible to Listing to obtain relief from any taxation to which they are entitled by reason of their being holders of such Units;
  - 8.35.4.2 the amounts of Managers' charges and Directors' fees and emoluments;

*Directors (including Directors of the Manager in the case of a Unit Trust)*

- 8.36 Copies of the Directors' service contracts, if any, shall be made available for inspection to the general public:

- 8.36.1 at the registered office of the Scheme during Normal Business Hours from the date of the notice convening the Annual General Meeting up to close of the meeting; and
- 8.36.2 throughout the meeting at the place where the Annual General Meeting is being held.

- 8.37 A Scheme shall notify the MFSA without delay of any change in the holding of its Units by any Director and/or of any person connected with the Director. The communication shall include the following: (Capital Markets Rule 8.38 does not apply to unit trusts.)

- 8.37.1 the date on which the transaction giving rise to the interest (or cessation of the interest) was effected;
- 8.37.2 the price, amount and class of Securities concerned;
- 8.37.3 the nature of the transaction and the nature and extent of the Director's interest in the transaction; and
- 8.37.4 the number of Units held and the percentage holding of the Director following the transaction.

The above information is required to be communicated by the Scheme insofar as it is known to the Scheme. The Scheme, however, shall ensure that the Directors disclose all the necessary information in time to enable the Scheme to comply with this requirement.

*Consultation with the MFSA and Maintenance of Information*

8.38 The Scheme shall provide the MFSA with the following information when such information is available as required in terms of the Scheme's Prospectus or when so required by the MFSA:

8.38.1 Net Assets Value;

8.38.2 Net Assets Value per share; and

8.38.3 Total number of unit holders.

8.39 The MFSA shall be consulted in advance of any event of which the Scheme is aware and which is relevant to the maintenance of Admissibility by the Scheme.

8.40 The Scheme shall maintain a complete file of all advertisements, brochures, leaflets and other documents issued with a view to effecting or stimulating sales or purchases of Units. The file shall be produced to the MFSA or its representative on demand.

*Other Continuing Obligations*

8.41 Besides complying with the Continuing Obligations contained in this section, Schemes having listed Units shall also ensure that the following obligations shall be observed so long as the Units remain authorised as Admissible to Listing:

8.41.1 the respective obligations of the Scheme and/or its manager under the constitutional documents of the Scheme and the applicable legal and regulatory requirements are complied with;

8.41.2 the amount of the charges and expenses (to the extent borne by the Scheme) of the Managers, the trustee and any agent of the Managers or trustee, the Investment Adviser or any sub-adviser or any custodian or sub-custodian, shall be clearly set out in each Annual Report issued by the Scheme;

8.41.3 all Circulars issued in respect of the sale of Units in the Scheme shall clearly state any terms or conditions under which the Managers undertake to repurchase Units in the Scheme.

### **Section III Continuing Obligations of Schemes Authorised for Admissibility for Secondary Listing**

#### *General Obligations*

8.42 The Scheme shall appoint, and maintain throughout the period that the units are authorised as admissible to listing, a licensed Sponsor to deal with all matters appertaining to authorisation for Admissibility to Listing. The appointed Sponsor will also be responsible:

8.42.1 for ensuring that, for Schemes whose Primary Listing is on an overseas exchange, at least the equivalent information as that made available to the overseas exchange is also made available to the Regulated Market in Malta; and

8.42.2 for providing such other information related to the operations of the Scheme at regular intervals as the MFSA may require.

The MFSA shall be consulted in advance of any event of which the Scheme is aware and which is relevant to the maintenance of Admissibility by the Scheme.

#### *General Obligation of Disclosure*

8.43 The MFSA may be prepared to dispense with, vary or not require compliance with any of the continuing obligations to suit the circumstances of a particular case. Any such dispensation, variation or concession shall be signified to the Applicant or Issuer by the MFSA in writing.

#### *Continuing Obligations relating to Capital and Management*

8.44 The Scheme shall immediately notify the Regulated Market where it is listed of the following:

8.44.1 the net asset value and net asset value per share, when calculated;

8.44.2 any suspension in the calculation of net asset value or in the process of redemption;

8.44.3 any change in the status of the Scheme for taxation purposes;

8.44.4 any changes in the capital structure of the Scheme; and

8.44.5 any other information necessary to enable Unit holders to appraise the position of the Scheme and to avoid the establishment of a false market in its Units including changes to the Directors or any service providers of the Scheme.

#### *Financial Information: Annual Report and Accounts*

8.45 A Scheme shall publish and make available to the public an Annual Report and Audited Accounts within four (4) months of the end of the financial period to which they relate. The Scheme shall on request and free of charge also send to Unit holders the Annual Report and Audited Accounts within four (4) months of the end of the financial period to which they relate.

The Annual Report shall be lodged with the MFSA at the earliest opportunity but in any event within four (4) months of the end of the financial period to which it relates.

In addition, the Report shall:

8.45.1 have been prepared in accordance with International Financial Reporting Standards or any other international reporting standards;

- 8.45.2 have been independently audited and reported on in accordance with the International Standards on Auditing as promulgated by the International Federation of Accountants;
- 8.45.3 be in consolidated form if the Scheme operates as an umbrella fund unless otherwise authorised by the MFSA;
- 8.45.4 include the following:
  - 8.45.4.1 the information necessary to enable holders of the Scheme's Units authorised as Admissible to Listing to obtain relief from any taxation to which they are entitled by reason of their being holders of such Units;
  - 8.45.4.2 the amounts of Managers' charges and Directors' fees and emoluments;

*Consultation with the MFSA and Maintenance of Information*

- 8.46 The Scheme shall provide the MFSA with the following information when such information is available as required in terms of the Scheme's Prospectus or when so required by the MFSA:
  - 8.46.1 Net Assets Value;
  - 8.46.2 Net Assets Value per share; and
  - 8.46.3 Total number of unit holders.

## Section IV – Admissibility of Closed-Ended Collective Investment Schemes

### *Introduction*

- 8.47 This section applies to the Admissibility of Closed-Ended Collective Investment Schemes investing in Securities, listed or unlisted, including warrants, money market instruments, bank deposits, currency investments, commodities, options, future contracts, precious metals or Property. Investments may also take the form of partnership arrangements, participations, joint ventures and other forms of non-corporate investments as well as other Securities as may be held with the authorisation of the MFSA.

### *Basic Conditions*

- 8.48 The Scheme and its management bind themselves, either through the inclusion of relevant clauses in the Articles of Association, trust deed or equivalent document of constitution, or in such other manner as is acceptable to the MFSA, to ensure compliance with the following requirements throughout the period it is authorised as Admissible to Listing under this section:
- 8.48.1 that the Scheme, either on its own or in conjunction with any connected person, shall not take legal or effective management or control of any underlying investments in companies or other entities in which it invests;
  - 8.48.2 that any custodian, management Company, any of their connected persons and every Director of any investment Company and management Company, is prohibited from voting at, or being part of a quorum for, any meeting to the extent that they have, or any of their associates has, a material interest in the business to be conducted; and
  - 8.48.3 that the Scheme's Auditors are independent of the Scheme, any management Company and any custodian and that the said Auditors act in accordance with the International Standards on Auditing as promulgated from time to time by the International Federation of Accountants; and
  - 8.48.4 that unless authorised by the shareholders, a Scheme will not issue further shares of the same class as existing shares for cash at a price below the net asset value per share of those shares unless they are first offered pro rata to existing holders of shares of that class.
- 8.49 Schemes being Property Companies will also be subject to the additional requirements laid out in Chapter 7.
- 8.50 All Applicants shall appoint a Sponsor in accordance with the requirements of Chapter 2. Besides fulfilling the obligations laid down in Chapter 2, the Sponsor will be responsible for preparing the applicant for authorisation for Admissibility to Listing and for dealing with the MFSA on all matters arising in connection with the application.
- 8.51 When considering an application for authorisation for Admissibility to Listing, the MFSA reserves the right to assess each case on its own merits and, on the basis of the relevant circumstances, may modify or request additional authorisation requirements as it deems fit.

*Conditions to be fulfilled by a Scheme seeking authorisation for Admissibility for Listing*

- 8.52 A formal application for authorisation for Admissibility to Listing in accordance with the application form in Appendix 8.1 shall be lodged with the MFSA at least five (5) Business Days prior to the date of hearing of the application by the MFSA. The following requirements shall also be satisfied:
- 8.52.1 the application form shall be duly completed and signed by a duly authorised representative of the Scheme and the Sponsor; and
  - 8.52.2 in the case of any other form of closed ended collective investment scheme, the form shall also be signed by a duly authorised Officer for and on behalf of the Scheme and, if appropriate, the management company.
- 8.53 The Formal Application shall be accompanied by the following documents:
- 8.53.1 one (1) copy of the Prospectus marked in the margin to indicate where the relevant requirements in this Chapter have been met; and
  - 8.53.2 any other document or information which the MFSA may require.
- 8.54 The Sponsor shall communicate to the MFSA any event or arrangement of which he is aware, and which, in his/her opinion, is relevant to the authorisation for Admissibility of the Scheme to listing or if the Sponsor is not aware of any such event or arrangement, an appropriate negative statement to this effect.
- 8.55 When a formal application for authorisation for Admissibility to Listing under this section is made to the MFSA concurrently with the submission to the MFSA of an application for a licence pursuant to the provisions of the Investment Services Act, the MFSA shall consider such application for authorisation for Admissibility to Listing 'provided that in the case of a Collective Investment Scheme established under the laws of Malta or established in a Recognised Jurisdiction and which is to be marketed in Malta, the MFSA shall only issue the authorisation for Admissibility to Listing under this section after licensing by the MFSA of the collective investment scheme.
- 8.56 The MFSA shall notify the Applicant of its decision to approve or refuse an application for Admissibility to Listing including the approval or refusal of the Prospectus:
- 8.56.1 before the end of the period of ten (10) days beginning with the date on which the application is received; or
  - 8.56.2 The time limit referred to in Capital Markets Rule 8.56.1 shall be extended to 20 Working Days if the public offer involves units issued by a Scheme which does not have any units Admitted to Trading on a Regulated Market and which has not previously offered units to the public.
  - 8.56.3 If the MFSA finds, on reasonable grounds, that the documents submitted to it are incomplete or that supplementary information is needed, the time limits referred to in Capital Markets Rules 8.56.1 and 8.56.2 above shall apply only from the date on which such information is provided by the Applicant.
- The MFSA shall notify the Applicant if the documents are incomplete within 10 Working Days of the submission of the application.
- If the MFSA fails to give a decision on the Prospectus within the time limits laid down in Capital Markets Rules 8.56.1 and 8.56.2, this shall not be deemed to constitute approval of the application.
- 8.57 The Scheme shall comply at all times with MFSA regulations related to such Schemes, particularly those concerning investment restrictions.

*Prospectus*

- 8.58 The Prospectus and supplements thereto shall not be published, before they have been formally approved by the MFSA.
- 8.59 A Prospectus of a Scheme which require a licence under the Investment Services Act, Cap 370 shall be drawn up in compliance with and adhere to the provisions of the applicable Investment Services Rules published by MFSA in terms of the Investment Services Act. The prospectus of a Scheme established in a Recognised Jurisdiction and which does not require a licence under the Investment Services Act, Cap 370 shall be drawn up in compliance with the requirements of the Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements. The prospectus of all schemes seeking admissibility to listing shall also contain:
- 8.59.1 a statement that application has been made to a Regulated Market for Admission to Listing, of the Units issued or to be issued by the Scheme;
  - 8.59.2 the name of the Regulated Market on which the primary listing is or is to be;
  - 8.59.3 particulars of any other Regulated Market on which any of the Units are listed or dealt in or where listing or permission to deal is being sought or an appropriate negative statement; and
  - 8.59.4 particulars of any exchange where the Scheme had previously sought a listing but had been refused and the reasons for such a refusal.
- 8.60 The Scheme, may draw up its Prospectus as a single document or separated documents. A Prospectus composed of separate documents shall divide the required information into a registration document, a securities note and a summary note. The registration document shall contain the information relating to the Scheme. The securities note shall contain the information concerning the units on offer.
- 8.61 The Prospectus shall also include the following statement:
- “This document includes information given in compliance with the Capital Markets Rules of the MFSA for the purpose of giving information with regard to the Scheme. All of the Directors whose names appear on page [ ], accept responsibility for the information contained in this document. To the best of the knowledge and belief of the Directors who have taken all reasonable care to ensure that such is the case, the information contained in this document is in accordance with the facts and does not omit anything likely to affect the import of such information.”
- 8.62 The MFSA may authorise the omission of information from the Prospectus which is applicable and required by the Capital Markets Rules if it considers that:
- 8.62.1 the information is of minor importance only and is not such as will influence assessment of the assets and liabilities, financial position, profits and losses and prospects of the Issuer, or Guarantor, if any; or
  - 8.62.2 disclosure would be contrary to the public interest; or
  - 8.62.3 disclosure would be seriously detrimental to the Scheme and omission is not likely to mislead investors with regard to facts and circumstances, knowledge of which is essential for the assessment of the Scheme or Guarantor, if any and of the rights attached to the units in question.

- 8.63 Without prejudice to the adequate information of investors, where, exceptionally, certain information required by this Chapter to be included in a Prospectus is inappropriate to the Scheme's sphere of activity or to the legal form of the Scheme or to the offer of units to which the Prospectus relates, the Prospectus shall contain information equivalent to the required information.
- 8.64 A Prospectus shall be valid for 12 months after its approval provided that it is completed by the supplements required pursuant to Capital Markets Rule 8.65 below.
- 8.65 Every significant new factor, material mistake or inaccuracy relating to the information included in the Prospectus which is capable of affecting the assessment of the units and which arises or is noted between the time when the Prospectus is approved and the time when trading on a Regulated Market begins, whichever occurs later, shall be mentioned in a supplement to the Prospectus.  
Investors who have already agreed to purchase or subscribe for the units before the supplement is published shall have the right to withdraw their acceptances within two working days after the publication of the supplement, provided that the new factor, mistake or inaccuracy referred to above arose before the final closing of the Public Offer and the delivery of the securities. That period may be extended by the Issuer. The final date of the right of withdrawal shall be stated in the supplement.
- 8.66 In the case of an Offering Programme, the base Prospectus, previously filed, shall be valid for a period of up to 12 months.
- 8.67 A registration document, previously filed, shall be valid for a period of up to 12 months provided that it has been updated in accordance with Capital Markets Rule 8.65.
- 8.68 Once approved, the Prospectus shall be filed with the MFSA and shall be made available to the public by the Applicant at the latest six (6) Working Days before the securities involved are Admitted to Trading. In addition, in the case of an initial public offer of a class of shares not already Admitted to Trading on a Regulated Market that is seeking Admissibility to Listing for the first time, the Prospectus shall be available at least six (6) Working Days before the offer opens.
- 8.69 In the case of a Prospectus comprising several documents and/or incorporating by reference, the documents and information making up the Prospectus may be published and circulated separately provided that the said documents are made available to the public, free of charge. Each document shall indicate where the other constituent documents of the full Prospectus may be obtained.
- 8.70 The text and the format of the Prospectus and any supplements thereto, made available to the public, shall at all times be identical to the original version approved by the MFSA.
- 8.71 Where the Prospectus is made available by publication in electronic form, a hard copy shall nevertheless be delivered to the investor, upon his request and free of charge, by the Scheme, the person asking for admission to trading or the financial intermediaries placing or selling the units.
- 8.72 Where Malta is the home Member State and an admission to trading is provided for in one or more Member State, other than Malta or EEA State, the Prospectus approved by the MFSA and any supplements thereto shall be valid in any number of host Member States or EEA States, provided that the regulatory authority of each host Member State or EEA State is notified in accordance with Capital Markets Rule 8.73 below.
- 8.73 The MFSA shall provide the regulatory authority of the host Member State or EEA State, at the request of the Scheme or the person responsible for drawing up the Prospectus and within three Working Days following that request or, if the request is submitted together



with the draft Prospectus, within one Working Day after the approval of the Prospectus, with a certificate of approval and a copy of the Prospectus as approved. If applicable, this notification shall be accompanied by a translation of the summary of the Prospectus produced under the responsibility of the Scheme or person responsible for drawing up the Prospectus. The same procedure shall be followed for any supplement to the Prospectus. The MFSA shall also notify the Issuer or the person responsible for the drawing up the Prospectus of the certificate of approval at the same time it notifies the regulatory authority of the host Member State or EEA State.

For the purposes of this Capital Markets Rule, the certificate of approval shall consist of a statement:

- 8.73.1 that the Prospectus has been drawn up in accordance with the Prospectus Regulation;
- 8.73.2 that the Prospectus has been approved in accordance with the Prospectus Regulation, by the MFSA or the regulatory authority of the Member State or EEA state, as the case may be, providing the certificate; and where applicable
- 8.73.3 of the reasons as to why the MFSA or the regulatory authority providing the certificate, authorised, in accordance with the Prospectus Regulation, the omission from the Prospectus of information which would otherwise have been included.

8.74 A Prospectus in relation to an admission to trading which has been approved by the regulatory authority of another Member State, other than Malta, or an EEA State is not deemed to be an approved Prospectus unless that authority has provided the MFSA with a certificate of approval and a copy of the Prospectus as approved; together with, where requested by the MFSA, a translation into English or Maltese of the summary of the Prospectus.

**Section V - Continuing Obligations of closed ended collective investment schemes  
Authorised as Admissible for Primary Listing**

In order to qualify for a listing, a scheme shall be duly licensed by the Malta Financial Services Authority pursuant to the provisions of the Investment Services Act or established in a Recognised Jurisdiction.

Once a Scheme is authorised as Admissible to Listing and remains on a Recognised List, the Scheme shall be responsible for ensuring compliance with the continuing obligations of these Capital Markets Rules at all times.

The Scheme shall comply with the continuing obligations to provide information and if it fails to do so, the MFSA may itself publish any relevant information it may have in its possession after having heard the representation of the Scheme.

For the purposes of this Section “Home Member State” shall have the same meaning given in Chapter 5. The Scheme shall disclose the choice of its Home Member State where applicable in terms of Chapter 5.

*General Obligation of Disclosure*

8.75 Every Scheme applying for authorisation for Admissibility to Listing is required to comply with the continuing obligations as set out in this Section V of this Chapter and to which they would be subject as a condition of the Authorisation for Admissibility to Listing of the Units in the Scheme except insofar as the Scheme is specifically exempt from any such obligations by the MFSA.

8.76 The MFSA may be prepared to dispense with, vary or not require compliance with any of the continuing obligations to suit the circumstances of a particular case. Any such dispensation, variation or concession shall be signified to the Applicant or Issuer by the MFSA in writing.

8.77 Generally, and apart from compliance with all specific requirements which follow, any information necessary to enable holders of the Scheme’s Units authorised as admissible to Listing as well as the general public to appraise the financial position of the Scheme and to avoid the creation of a false market in such Units, shall be made known to the MFSA. Such information shall not normally be passed on to a third party other than its Manager, custodian and advisers prior to it being communicated to the MFSA.

8.77.1 A Scheme, its management Company, its custodian and its advisers, may give information concerning the Scheme in strict confidence to outside advisers and to persons with whom it is negotiating with a view to the raising of finance. Information required by and provided in confidence to and for the purposes of a regulatory authority, need not be communicated to the MFSA unless so required by the MFSA.

8.77.2 Where it is being proposed to announce information which might affect the market price of the Scheme’s Units that have been authorised as admissible to Listing at any meeting of holders of those Units, or any class thereof, arrangements shall be made with the Regulated Market so that an announcement is immediately made known to the market.

8.77.3 A Scheme shall give notice to the MFSA of any major new developments in its sphere of activity which are not yet public knowledge and which, by virtue of their effect on its assets and liabilities or financial position or on the general course of its business, may lead to substantial movements in the price or value of its Units.

8.77.4 The Scheme shall update its Prospectus whenever there are material changes in the contents or when the MFSA so requires. Every subsequent Prospectus issued by or on behalf of the Scheme shall contain a statement that the Units which have already been issued are authorised as Admissible to Listing.

8.78 *Omissis*

8.79 *Omissis*

8.80 *Omissis*

8.81 *Omissis*

#### *Uses of Languages*

8.82 When Malta is the Home Member State and securities are Admitted to Trading only in Malta, Regulated Information shall be disclosed in the English or Maltese language.

8.83 When Malta is the Home Member State and units are Admitted to Trading in Malta and in one or more host Member or EEA State, the Regulated Information shall be disclosed:

8.83.1 in the English or in the Maltese language; and

8.83.2 depending on the choice of the Scheme, either in a language accepted by the regulatory authorities of those host Member or EEA States or in a language customary in the sphere of international finance.

8.84 When the Scheme is Admitted to Trading in Malta as the Host Member State, the Regulated Information shall be disclosed either in English or Maltese or in a language customary in the sphere of international finance.

When Malta is the Home Member State and the Scheme is Admitted to Trading on a Regulated Market in one or more host Member or EEA States excluding Malta, the Regulated Information shall be disclosed either in English or Maltese or in a language customary in the sphere of international finance, depending on the choice of the Scheme.

8.85 Where the Scheme is Admitted to Trading on a Regulated Market without the Scheme's consent, the obligation under Capital Markets Rules 8.82 to 8.84 shall be incumbent not upon the Scheme, but upon the person who, without the Scheme's consent, has requested such admission.

8.86 Unit Holders and the natural persons or Legal Entities referred to in Capital Markets Rules 8.138 and 8.146 shall notify information to the Scheme in a language customary in the sphere of international finance. In this case, the Scheme is not required to provide the MFSA with a translation of such notification.

8.87 Where the units of a Scheme whose denomination per unit amounts to at least hundred thousand euro (€100,000) at the date of the issue, are admitted to trading on a Regulated Market in one or more Member or EEA States, Regulated Information

shall be disclosed to the public either in English or Maltese language or in a language customary in the sphere of international finance, at the choice of the Scheme or of the person who, without the Scheme's consent, has requested such admission.

- 8.88 If an action concerning the content of Regulated Information is brought before a court or tribunal in Malta, responsibility for the payment of costs incurred in the translation of that information for the purposes of the proceedings shall be decided in accordance with the Maltese law.  
Access to Regulated Information
- 8.89 A Scheme or a person who has applied, without the Scheme's consent, for Admissibility to Listing on a Regulated Market shall file and disclose Regulated Information in the manner set out in Capital Markets Rules 8.90 to 8.101.  
Filing of Regulated Information with the MFSA and the Officially Appointed Mechanism.
- 8.90 A Scheme or a person who has applied, without the Scheme's consent, for Admissibility to Listing on a Regulated Market shall file Regulated Information with the MFSA and the Officially Appointed Mechanism at the same time such information is disclosed to the public in terms of Capital Markets Rule 8.91.  
Disclosure of Regulated Information to the Public
- 8.91 When disseminating Regulated Information a Scheme or other person who has applied, without the Scheme's consent, for Admissibility to Listing on a Regulated Market shall ensure that the minimum standards laid down in Capital Markets Rules 8.92 to 8.98 are observed.
- 8.92 Regulated Information shall be disseminated in a manner ensuring that it is capable of being disseminated to as wide a public as possible, and as close to simultaneously as possible in the Home Member State and in other Member or EEA States.
- 8.93 Regulated Information shall be communicated to the media in unedited full text, provided that in the case of the Annual Financial Report and the Half-yearly Report, this requirement shall be deemed to be fulfilled if the information communicated to the media indicates on which website, in addition to the Officially Appointed Mechanism for the central storage of Regulated Information, the relevant documents are available.
- 8.94 Regulated Information shall be communicated to the media in a manner which ensures the security of the communication, minimises the risk of data corruption and unauthorized access, and provides certainty as to the source of the Regulated Information. Security of receipt shall be ensured by remedying as soon as possible any failure or disruption in the communication of Regulated Information.
- 8.95 The Scheme or the person who has applied, without the Scheme's consent, for Admissibility to Listing on a Regulated Market, shall not be responsible for systemic errors or shortcomings in the media to which the Regulated Information has been communicated.
- 8.96 Regulated Information shall be communicated to the media in a way which:  
8.96.1 makes it clear that the information is Regulated Information; and  
8.96.2 identifies clearly:  
8.96.2.1 the Scheme concerned;  
8.96.2.2 the subject matter of the Regulated Information; and  
8.96.2.3 the time and date of the communication of the Regulated Information

by the Scheme or the person who has applied for an admission to listing on a Regulated Market without the Scheme's consent.

- 8.97 In relation to any disclosure of Regulated Information, the MFSA may request from the Scheme or the person who has applied for Admissibility to Listing on a Regulated Market without the Scheme's consent, the following information.
- 8.97.1 the name of the person who communicated the information to the media;
  - 8.97.2 the security validation details;
  - 8.97.3 the time and date on which the information was communicated to the media;
  - 8.97.4 the medium in which the information was communicated;
  - 8.97.5 if applicable, the details of any embargo placed by the Scheme on the Regulated Information.
- 8.98 The Scheme or person who has applied for admissibility to listing on a Regulated Market without the Scheme's consent, shall not charge investors any specific cost for providing Regulated Information.
- 8.99 Where units are Admitted to Trading on a Regulated Market in Malta and Malta is the only Host Member State, a Scheme or a person who has applied for Admissibility to Listing on a Regulated Market without the Scheme's consent, shall disclose Regulated Information in the same manner as prescribed in Capital Markets Rules 8.92 to 8.98.

*Disclosure of Information in a non Member or EEA State*

- 8.100 The MFSA shall ensure that information, including Regulated Information, disclosed in a non Member or EEA State which may be of importance to the public in the Member or EEA States is disclosed in terms of Capital Markets Rules 8.92 to 8.98.
- 8.101 The language used to disclose information in terms of Capital Markets Rule 8.100 shall be determined in accordance with Capital Markets Rules 8.82 to 8.88.  
Continuing Obligations relating to Capital and Management
- 8.102 The Scheme shall immediately notify the Regulated Market where it is listed of the following:
- 8.102.1 the net asset value and net asset value per share, when calculated;
  - 8.102.2 any suspension in the calculation of net asset value or in the process of redemption;
  - 8.102.3 any change in the status of the Scheme for taxation purposes;
  - 8.102.4 any changes in the capital structure of the Scheme; and
  - 8.102.5 any other information necessary to enable Unit holders to appraise the position of the Scheme and to avoid the establishment of a false market in its Units.
- Rights as between holders
- 8.103 A Scheme having Units of different classes in issue, any of which classes have been authorised as Admissible to Listing, shall ensure identical treatment of all holders in the same position (e.g. in the same class).  
Communications with Holders
- 8.104 A Scheme shall ensure that all the facilities and information necessary to enable holders of shares to exercise their rights are available in Malta, where Malta is the Home Member State and that the integrity of data is preserved.  
The Scheme shall:
- 8.104.1 provide information on the place, time and agenda of meetings, the total number of shares and voting rights and the rights of holders entitled to participate in meetings

8.104.2 make available a proxy form in terms of Capital Markets Rules 5.26 and 5.27, on paper or, where applicable, by electronic means, to each person entitled to vote at a shareholders' meeting, together with the notice concerning the meeting or, on request, after an announcement of the meeting;

8.104.3 At the request of a Unit Holder, designate as its agent a financial or credit institution through which the Unit Holder may exercise his financial rights; and

8.104.4 publish notices or distribute circulars concerning the allocation and payment of dividends and the issuer of new shares, including information on any arrangements for allotment, subscription, cancellation or conversion.

8.105 Whenever holders are sent a notice of a meeting which includes any business other than Ordinary Business at an Annual General Meeting, an explanatory circular shall accompany the notice or, if the business is to be considered at or on the same day as an Annual General Meeting, an explanation shall be incorporated in the Directors' report. Drafts of these documents should be submitted to the MFSA in advance of the issue to holders.

8.106 If appropriate, a proxy form shall be sent with the notice convening the meeting of holders of listed Units to each person entitled to vote at the meeting.

8.107 In the event of a Circular being issued to the holders of any particular class of Unit, the Scheme shall issue a copy or summary of such Circular to the holders of all other classes of Units unless the contents of such Circulars are manifestly irrelevant to such other holders.

8.108 The Scheme may use electronic means to circulate information other than Annual Accounts, provided such a decision to this effect is taken in a general meeting and such decision meets at least the following conditions:

8.108.1 the use of electronic means shall in no way depend upon the location of the seat or residence of the unit holder or, in the cases referred to in Capital Markets Rule 8.146.1, of the natural persons or Legal Entities

8.108.2 identification arrangements shall be put in place so that the Unit holders, or the natural person or Legal Entities entitled to exercise or to direct the exercise of voting rights, are effectively informed;

8.108.3 unit holders, or in the cases referred to in Capital Markets Rule 8.146.1, the natural persons or Legal Entities entitled to acquire, dispose of or exercise voting rights, shall be contacted in writing to request their consent for the use of electronic means for conveying information and, if they do not object within a reasonable period of time, their consent shall be deemed to be given. They shall be able to request, at any time in the future, that information be conveyed in writing; and

8.108.4 any apportionment of the costs entailed in the conveyance of such information by electronic means shall be determined by the Scheme in compliance with the principle of equal treatment.

8.109 A Scheme whose registered office is in a non Member or EEA State shall be considered by the MFSA to be subject to equivalent requirements as those prescribed by Capital Markets Rules 8.104.1 and 8.104.4, as far as the content of the information about meetings is concerned, where, under the law of that country, the Scheme is required to provide at least information about the place, time and agenda of meetings.

#### *Miscellaneous Obligations*

8.110 Any decision to pay or make any dividend or other distribution on Units authorised as Admissible to Listing or to pass any interest payment or dividend on Units authorised as Admissible to Listing or any other decision requiring announcement shall be communicated to the Regulated Market immediately after board

authorisation.

8.111A Scheme shall make appropriate arrangements to facilitate the efficient settlement of all transfers and registration of the Units as appropriate.

8.112 If a Scheme proposes to enter into a transaction with a Related Party, the Scheme is required to obtain the authorisation of its members prior to the transaction unless such transactions have been identified and described in the Prospectus.

8.113 The Scheme shall supply the MFSA with an original and an electronic copy of:

8.113.1 all periodicals, special reports and Circulars released or issued by the Scheme for the information of holders of the Scheme's units;

8.113.2 the published audited Annual Accounts of the Scheme and all documents required by law to be annexed thereto, as soon these have been made available to the public;

8.113.3 all proceedings of the annual general meeting where they contain information additional to that contained in the Annual Accounts.

The Scheme shall also communicate the draft amendments to its Memorandum and Articles of Association to the MFSA and the Regulated Market to which its units have been Admitted to Trading.

#### *Financial Information - Annual Financial Report*

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 MFSA for Validation in terms of Capital Markets 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.

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;

8.114.3 be in consolidated form unless otherwise authorised by the MFSA;

8.114.4 include the following :

8.114.4.1 the audited financial statements;

8.114.4.2 The Directors report in accordance with the Sixth Schedule of the Companies Act;

8.114.4.3 Statements made by the persons responsible within the Scheme, whose names and functions shall be clearly indicated, to the effect that, to the best of their knowledge, the financial statements prepared in accordance with the applicable set of accounting standards give a true and fair view of the assets, liabilities, financial position and profit or loss of the Scheme and the undertakings included in the consolidation taken as a whole and that the directors report includes a fair review of the development and performance of the business and the position of the Scheme and the undertakings included in the consolidation taken as a whole,

together with a description of the principal risks and uncertainties that they face;

8.114.4.4 the information necessary to enable holders of the Scheme's Units authorised as Admissible to Listing to obtain relief from any taxation to which they are entitled by reason of their being holders of such Units;

8.114.4.5 the amounts of Managers' charges and Directors' fees and emoluments;

8.114.4.6 a statement of all unlisted investments with a value greater than five percent (5%) of the Scheme's gross assets, and the ten (10) largest investments stating in respect of each such investment:

8.114.4.6.1 the Market Value of the listed investment;

8.114.4.6.2 Directors' valuation of the unlisted securities;

8.114.4.6.3 the name of the Issuer of such investments;

8.114.4.6.4 the denomination of the investment; and

8.114.4.6.5 the percentage of total net assets owned by the Scheme.

8.114.5 In addition, an analysis of realised and unrealised surpluses, should also be provided stating separately profits and losses as between those investments which are listed on a Regulated Market and those investments which are not so listed.

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.

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

*Requirements Equivalent to the Directors' Report (Capital Markets Rule 8.114.4.2)*

- 8.115 A Scheme whose registered office is in a nonMember or EEA State shall be considered by the MFSA to be subject to equivalent requirements as those prescribed by Capital Markets Rule 8.114.4.2 where, under the law of that country, a report is required to be prepared which includes at least the following information
- 8.115.1 a fair review of the development and performance of the Scheme's business and of its position, together with a description of the principal risks and uncertainties that it faces, such that the review presents a balanced and comprehensive analysis of the development and performance of the Scheme's business and of its position, consistent with the size and complexity of the business;
- 8.115.2 an indication of any important events that have occurred since the end of the financial year;
- 8.115.3 indications of the Scheme's likely future development.

- 8.116 For the purposes of Capital Markets Rule 8.115.1, the analysis required by that Capital Markets Rule shall, to the extent necessary for an understanding of the Scheme's development, performance or position, include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business.

*Requirements equivalent to the Statement of Responsibility (Capital Markets Rule 8.114.4.3)*

- 8.117 A Scheme whose registered office is in a non Member or EEA State shall be considered by the MFSA to be subject to equivalent requirements as those prescribed by Capital Markets Rules 8.114.4.3 and 8.122.2.3 where, under the law of that country, a person or persons involved in the Scheme are responsible for the



annual and half-yearly financial information, and in particular for the following:

- 8.117.1 the compliance of the financial statements with the applicable reporting framework or set of accounting standards;
- 8.117.2 the fairness of the management review included in the management report.

*Requirements equivalent to the Annual Financial Statements required to be prepared in terms of Capital Markets Rule 8.114.4.*

8.118 A Scheme whose registered office is in a non Member or EEA State shall be considered by the MFSA to be subject to equivalent requirements as those prescribed by Capital Markets Rule 8.114.4 where, under the law of that country, the provision of individual accounts by the holder of units in the Scheme which holder qualifies as a parent company in terms of the Companies Act, 1995, is not required but the Scheme whose registered office is in that non Member or EEA State is required to include the following information in the consolidated accounts:

- 8.118.1 for Schemes issuing shares, dividends computation and ability to pay dividends;
- 8.118.2 For all Schemes, where applicable, minimum capital and equity requirements and liquidity issues;

Provided that such Schemes shall be able to provide the MFSA with additional audited disclosures giving information on the individual accounts of the Scheme as standalone, relevant to the elements of information referred to in Capital Markets Rules 8.126.1 and 8.126.2 which disclosures may be prepared under the accounting standards of the non Member or EEA State in which the Scheme has its registered office.

*Requirements equivalent to the Annual Financial Statements required to be prepared in terms of Capital Markets Rule 8.114.1*

8.119 A Scheme whose registered office is in a non Member or EEA State shall be considered by the MFSA to be subject to equivalent requirements as those prescribed by Capital Markets Rule 8.124 where, under the law of that country, such Scheme is not required to prepare consolidated accounts but is required to prepare its individual financial statements in accordance with Generally Accepted Accounting Principles and Practice or with national accounting standards of the non Member or EEA State in which the Scheme has its registered office if these are equivalent to the Generally Accepted Accounting Principles and Practice.

8.120 If the individual financial statements are not considered by the MFSA to be equivalent in terms of Capital Markets Rule 8.119, such financial statements shall be presented in the form of restated financial statements.

8.121 Individual financial statements referred to in Capital Markets Rules 8.119 and 8.120 shall be audited independently.

*Financial Information – Half Yearly Report*

8.122 A Scheme shall publish and make available to the public its Half Yearly Report within two (2) months of the end of the period to which it relates. The Scheme shall on request and free of charge also send to Unit holders the Half Yearly Report within two (2) months of the end of the period to which it relates. The Scheme shall ensure that the Half Yearly Financial Report remains public for at least 10 years.

The Half Yearly Financial Report, one (1) copy of which shall be lodged with the MFSA at the earliest opportunity but in any event within two (2) months of the end of the financial period to which it relates, 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.

In addition, the Report shall:

8.122.1 be prepared in accordance with International Financial Reporting Standards;

8.122.2 include the following:

8.122.2.1 the condensed set of financial statements;

8.122.2.2 an interim directors report;

8.122.2.3 statements made by the persons responsible within the Scheme, whose names and functions shall be clearly indicated, to the effect that, to the best of their knowledge, the condensed set of financial statements which has been prepared in accordance with the applicable set of accounting standards gives a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer, or the undertakings included in the consolidation as a whole and that the interim directors report includes a fair review of the information required in terms of Capital Markets Rule 8.122.2.2.

8.122.2.4 When the Half Yearly Report has been audited or reviewed, the Auditors' report shall be reproduced in full, together with any reasoned qualifications which may have been made.

8.122.2.5 If the Half Yearly Report has not been audited or reviewed, the Scheme shall make a statement to that effect in its report.

*Condensed set of financial statements*

8.123 Where the Scheme is required to prepare Consolidated Accounts in accordance with Generally Accepted Accounting Principles and Practice, the condensed set of financial statements referred to in Capital Markets Rule 8.122.2.1 shall be prepared in accordance with the international accounting standard applicable to interim financial reporting as adopted by the EU,

8.124 Where the Scheme is not required to prepare Consolidated Accounts, the condensed set of financial statements shall at least contain

8.124.1 a condensed balance sheet;

8.124.2 a condensed profit and loss account; and

8.124.3 explanatory notes on these accounts.

Provided that when preparing the condensed balance sheet and the condensed profit and loss account, the Scheme shall follow the same principles for recognition and

measurement as when preparing annual audited financial statements.

- 8.125 The condensed balance sheet and the condensed profit and loss account referred to in Capital Markets Rules 8.124.1 and 8.124.2 shall show each of the headings and subtotals included in the most recent Annual Financial Statements of the Scheme. Additional line items shall be included if, as a result of their omission, the half-yearly financial statement would give a misleading view of the assets, liabilities, financial position and profit or loss of the Scheme.
- 8.126 The condensed set of financial statements prepared in terms of Capital Markets Rule 8.124 shall also contain the following comparative information:
- 8.126.1 a balance sheet as at the end of the first six months of the current financial year and a comparative balance sheet as at the end of the immediate preceding year;
- 8.126.2 a profit and loss account for the first six months of the current financial year and with effect from 1<sup>st</sup> March 2009, comparative information for the comparable period for the preceding financial year.
- 8.127 The explanatory notes referred to in Capital Markets Rule 8.124.3 shall include the following
- 8.127.1 sufficient information to ensure the comparability of the half-yearly financial statement with the annual financial statement;
- 8.127.2 sufficient information and explanations to ensure a user's proper understanding of any material changes in amounts and of any developments in the half-year period concerned, which are reflected in the balance sheet and the profit and loss account.

#### *Interim Directors' Report*

- 8.128 The Interim Directors' Report shall include at least an indication of important events that have occurred during the first six months of the financial year, and their impact on the condensed set of financial statements, together with a description of the principal risks and uncertainties for the remaining six months of the financial year.
- 8.129 In the Interim Directors' Report, Schemes shall at least disclose as major related parties' transactions:
- 8.129.1 related parties' transactions that have taken place in the first six months of the current financial year and that have materially affected the financial position or performance of the Scheme during that period;
- 8.129.2 any changes in the related parties' transactions described in the last Annual Financial Report that could have a material effect on the financial position or performance of the Scheme in the first six months of the current financial year.
- 8.130 Where the Scheme is not required to prepare Consolidated Accounts, it shall disclose, as a minimum, the following information with respect to material related party transactions which have not been concluded under normal market conditions:
- 8.130.1 the amount of such transactions;
- 8.130.2 the nature of the related party relationship; and
- 8.130.3 other information about the transactions necessary for an

understanding of the financial position of the Scheme.

- 8.131 In relation to the transactions referred to in Capital Markets Rule 8.132 information about individual related party transaction may be aggregated according to their nature except where separate information is necessary for an understanding of the effects of related party transactions on the financial position of the Scheme.

*Requirements Equivalent to Interim Directors' Report (Capital Markets Rule 8.128 – 8.131)*

- 8.132 A Scheme whose registered office is in a nonMember or EEA State shall be considered by the MFSA to be subject to equivalent requirements as those prescribed by Capital Markets Rule 8.122.2.2 where, under the law of that country, an interim management report is required to be prepared together with a condensed set of financial statements and such report includes at least the following information:

for issuers of shares and if already not disclosed on an ongoing basis, major related parties transactions

- 8.132.1 a review of the period covered;
- 8.132.2 indications of the Scheme's likely future development for the remaining six months of the financial year;
- 8.132.3 for other Schemes and if already not disclosed on an ongoing basis, major related parties transactions.

8.133 *Omissis*

8.134 *Omissis*

8.135 *Omissis*

8.136 *Omissis*

*Notification of the acquisition or disposal of major holdings to which voting rights are attached.*

- 8.137 Where the Home Member State is Malta and as soon as a Unit Holder acquires 5% or more of the Scheme's units to which voting rights are attached the Scheme shall immediately inform the Unit Holder of his obligation to notify the Scheme and the MFSA of any changes in major holdings in terms of Capital Markets Rules 8.138 to 8.145.

- 8.138 Any Unit holder who acquires or disposes of units to which voting rights are attached and where the home Member State is Malta, such Unit holder shall notify the Scheme and the MFSA of the proportion of voting rights of the Scheme held by such Unit holder as a result of the acquisition or disposal where that proportion reaches, exceeds or falls below the thresholds of 5%, 10%, 15%, 20%, 25%, 30%, 50%, 75% and 90%.

The voting rights shall be calculated on the basis of all the units to which voting rights are attached even if the exercise thereof is suspended.

This information shall also be given in respect of all the units which are in the same class and to which voting rights are attached.

8.139 The Scheme and the MFSA shall also be notified by a Unit holder when its holding in the Scheme reaches, exceeds or falls below the thresholds specified in the Capital Markets Rule 8.138, as a result of events changing the breakdown of voting rights. Where the Scheme is incorporated in a third country, the notification shall be made for equivalent events.

The Scheme shall make a Company Announcement disclosing the total number of voting rights and capital at the end of the relevant calendar month during which an increase or decrease of such total number has occurred. The threshold referred to in Capital Markets Rule 8.138 shall be calculated on the basis of this public information.

8.140 Capital Markets Rule 8.138 shall not apply to:

8.140.1 shares acquired for the sole purpose of clearing and settling within the usual short settlement cycle, not exceeding three trading days following the execution for the transaction

8.140.2 custodians holding shares in their custodian capacity provided such custodians can only exercise the voting rights attached to such units under instructions given in writing or by electronic means.

8.140.3 acquisitions or disposal of a major holding reaching or crossing the 5% threshold by a Market Maker acting in its capacity of a Market Maker and complying with the conditions and operating requirements set out in Capital Markets Rule 8.140.2 ,

8.140.4 Units provided to or by the members of the European System of Central Banks in carrying out their functions as monetary authorities, including units provided to or by members of the European System of Central Banks under a pledge or repurchase or similar agreement for liquidity granted for monetary policy purposes or within a payment system.

Provided that the above shall apply with regards to transactions lasting for a short period and the voting rights attaching to such units are not exercised.

8.141 A Market Maker shall be exempted in terms of Capital Markets Rule 8.140.2 provided that such Market Maker:

8.141.1 is authorised by its home member state under Directive 2004/39/EC;

8.141.2 does not intervene in the management of the Scheme concerned

8.141.3 does not exert any influence on the Scheme to buy such units or back the unit price; and

8.141.4 notifies the MFSA within the time limit laid down in Capital Markets Rule 8.157 that it conducts or intends to conduct market making activities on a particular Scheme.

8.142 Where the Market Maker ceases to conduct market making activities in relation to the Scheme concerned, it shall notify the MFSA accordingly.

8.143 The MFSA may require the Market Maker undertaking market making activities with respect to units of a Scheme whose Home Member State is Malta, as referred to in Capital Markets Rule 8.140.3, to identify the units or financial instruments held for market making activity purposes, in which case the Market Maker may make such identification by any verifiable means.

- 8.144 If the Market Maker is unable to identify the units or financial instruments concerned, the MFSA may require him to hold them in a separate account for identification purposes.
- 8.145 Where Malta is the Home Member State, voting rights held in the trading book, as defined in Article 11 of Directive 2006/49/EC on the capital adequacy of investment firms and credit institutions, of a credit institution or investment firm shall not be counted for the purposes of Capital Markets Rule 8.138 provided that:
- 8.145.1 the voting rights held in the trading book do not exceed 5%; and
- 8.145.2 the voting rights attached to units held in the trading book are not exercised or otherwise used to intervene in the management of the Scheme.  
Voting rights attached to units acquired for stabilisation purposes in accordance with Commission Regulation (EC) No 2273/2003 implementing Directive 2003/6/EC as regards exemptions for buy-back programmes and stabilisation of financial instruments, shall not be counted for the purposes of Capital Markets Rule 8.138 provided the voting rights attached to those units are not exercised or otherwise used to intervene in the management of the Scheme.
- 8.146 The notification requirement defined in Capital Markets Rule 8.138 shall also apply to a natural person or Legal Entity who:
- 8.146.1 is entitled to acquire, to dispose of, or to exercise voting rights in any of the following cases or a combination of them:
- 8.146.1.1 voting rights held by a third party with whom that person or entity has concluded an agreement, which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the Scheme in question;
- 8.146.1.2 voting rights held by a third party under an agreement concluded with that person or entity providing for the temporary transfer for consideration of the voting rights in question;
- 8.146.1.3 voting rights attaching to units which are lodged as collateral with that person or entity, provided the person or entity controls the voting rights and declares its intention of exercising them
- 8.146.1.4 voting rights attaching to units in which that person or entity has the right of usufruct;
- 8.146.1.5 voting rights which are held, or may be exercised within the meaning of Capital Markets Rule 8.146.1.1 to 8.146.1.4 above, by an undertaking controlled by that person or entity;
- 8.146.1.6 voting rights attaching to units deposited with that person or entity which the person or entity can exercise at its discretion in the absence of specific instructions from the Unit holders;
- 8.146.1.7 voting rights held by a third party in its own name on behalf of that person or entity;

- 8.146.1.8 voting rights which that person or entity may exercise as a proxy where the person or entity can exercise the voting rights at its discretion in the absence of specific instructions from the Unit holders.
- 8.147 The obligation to notify the Scheme in terms of Capital Markets Rule 8.138 shall be an individual obligation incumbent upon each unitholder, or each natural person or Legal Entity as referred to in Capital Markets Rule 8.146, or both in case the proportion of voting rights held by each party reaches, exceeds or falls below the thresholds laid down in Capital Markets Rule 8.138. In the circumstances, however, referred to in Capital Markets Rule 8.146.1.1 the said notification obligation shall be a collective obligation shared by all the parties to the agreement.
- 8.148 In the circumstances referred to in Capital Markets Rule 8.146.1.8, if a unitholder gives the proxy in relation to one unitholder meeting, notification may be made by means of a single notification when the proxy is given provided it is made clear in the notification what the resulting situation in terms of voting rights will be when the proxy may no longer exercise the voting rights at its discretion.
- 8.149 If in the circumstances referred to in Capital Markets Rule 8.146.1.8 the proxy holder receives one or several proxies in relation to one unitholder meeting, notification may be made by means of a single notification on or after the deadline for receiving proxies provided that it is made clear in the notification what the resulting situation in terms of voting rights will be when the proxy may no longer exercise the voting rights at its discretion.
- 8.150 When the duty to make notification lies with more than one natural person or Legal Entity, notification may be made by means of a single common notification but this does not release any of those persons from their responsibilities in relation to the notification.
- 8.151 A natural or Legal Entity shall make a notification in terms of Capital Markets Rule 8.138 in respect of the following financial instruments held by such person, directly or indirectly:
- 8.151.1 financial instruments that, on maturity, give the holder, under a formal agreement, either the unconditional right to acquire or the discretion as to his right to acquire, shares to which voting rights are attached, already issued, of an issuer whose shares are admitted to trading on a regulated market;
  - 8.151.2 financial instruments which are not included in Capital Markets Rule 5.151.1 but which are referenced to shares and which have the economic effect similar to the financial instruments referred to in Capital Markets Rule 5.151.1, whether or not they confer a right to a physical settlement.
- 8.151A The notification required shall include the breakdown by type of financial instruments held in accordance with Capital Markets Rules 5.151.1 and 5.151.2, distinguishing between the financial instruments which confer a right to a physical settlement and the financial instruments which confer a right to a cash settlement.
- 8.151B The number of voting rights shall be calculated by reference to the full notional amount of shares underlying the financial instrument except where the financial instrument provides exclusively for a cash settlement, in which case the number of voting rights shall be calculated on a “delta-adjusted” basis, by multiplying the

notional amount of underlying shares by the delta of the instrument. For this purpose, the holder shall aggregate and notify all financial instruments relating to the same underlying issuer. Only long positions shall be taken into account for the calculation of voting rights. Long positions shall not be netted with short positions relating to the same underlying issuer.

- 8.152 For the purposes of Capital Markets Rule 8.151:  
“qualifying financial instruments” means transferable securities and options, futures, swaps, forward rate agreements, contracts for differences, any other contracts or agreements with similar economic effects which may be settled physically or in cash.  
“formal agreement” means an agreement which is binding under applicable law.
- 8.153 The exemptions laid down in Capital Markets Rules 8.160, 8.140.1, 8.140.3, 8.141, 8.145, 8.162 and 8.163 shall apply mutatis mutandis to the notification requirements under Capital Markets Rule 8.151.
- 8.154 If a qualifying financial instrument relates to more than one underlying share, a separate notification shall be made to each Issuer of the underlying shares.
- 8.154A The notification required shall also apply to natural person and Legal Entity when the number of voting rights held directly or indirectly by such person or entity under Capital Markets Rules 8.138 and 8.146 aggregated with the number of voting rights relating to financial instruments held directly or indirectly under Capital Markets Rule 8.151 reaches, exceeds or falls below the thresholds set out in Capital Markets Rule 8.138.
- 8.155 The notification required under Capital Markets Rule 8.138 and 8.146 shall include the following information.
- 8.155.1 the resulting position in terms of voting rights;
  - 8.155.2 the chain of Controlled Undertakings through which voting rights and/or financial instruments are effectively held, if applicable;
  - 8.155.3 the date on which the threshold was reached or crossed;
  - 8.155.4 the identity of the person entitled to exercise voting rights, even if that person is not entitled to exercise voting rights under the conditions laid down in Capital Markets Rule 8.146.
  - 8.155.5 for instruments with an exercise period:
  - 8.155.6 an indication of the date or time period where shares will or can be acquired, if applicable;
  - 8.155.7 the date of maturity or expiration of the instrument;
  - 8.155.8 name of the underlying Scheme.
- 8.155A The notification required under Capital Markets Rule 5.154A shall include a breakdown of the number of voting rights attached to shares held in accordance with Capital Markets Rules 8.138 and 8.146 and voting rights relating to financial instruments in terms of Capital Markets Rule 8.151.
- 8.155B Voting rights relating to financial instruments that have already been notified in accordance with Capital Markets Rule 8.151 shall be notified again when the natural



person or the Legal Entity has acquired the underlying shares and such acquisition results in the total number of voting rights attached to shares issued by the same issuer reaching or exceeding the thresholds laid down by Capital Markets Rule 8.138.

8.156 The notification required under Capital Markets Rule 8.138 shall include the following information:

- 8.156.1 the resulting position in terms of voting rights;
- 8.156.2 the chain of controlled undertakings through which voting rights are effectively held, if applicable;
- 8.156.3 the date on which the threshold was reached or crossed; and
- 8.156.4 the identity of the Unit holders, even if that Unit holder is not entitled to exercise voting rights under the conditions laid down in Capital Markets Rule 8.146, and of the natural person or Legal Entity entitled to exercise voting rights on behalf of that Unit holders.

8.157 The notification to the Scheme referred to in Capital Markets Rule 8.156 shall be effected promptly, but not later than four trading days following the date on which the Unit holder, or the natural person or Legal Entity representing the Unit holder:

- 8.157.1 learns of the acquisition or disposal or of the possibility of exercising voting rights, or on which, having regard to the circumstances, should have learned of it, regardless of the date on which the acquisition, disposal or possibility of exercising voting rights takes effect; or
- 8.157.2 is informed about the events changing the breakdown of voting rights.

8.158 For the purposes of Capital Markets Rule 8.157.1, the holder of Units in the Scheme, or the natural person or Legal Entity representing the holder of Units in the Scheme shall be deemed to have knowledge of the acquisition, disposal or possibility to exercise voting rights no later than two trading days following the transaction in question.

8.160 An undertaking shall be exempted from notifying the Scheme of any changes in its holding as required under Capital Markets Rules 8.138 if the notification is made by the parent undertaking or, where the parent undertaking is itself a controlled undertaking, by its own parent undertaking.

*Notification by Management Companies and Investment Firms*

8.161 For the purposes of Capital Markets Rules 8.162.1 and 8.163.4 “direct instruction” and “indirect instruction” shall have the following meaning:

“direct instruction” means any instruction given by the Parent Undertaking, or another Controlled Undertaking of the Parent Undertaking, specifying how the voting rights are to be exercised by the Management Company or investment firm in particular cases;

“indirect instruction” means any general or particular instruction, regardless of the form, given by the Parent Undertaking, or another Controlled Undertaking of the Parent Undertaking, that limits the discretion of the management company or investment firm in relation to the exercise of the voting rights in order to serve specific business interests of the Parent Undertaking or another Controlled Undertaking of the Parent Undertaking.

8.162 The Parent Undertaking of a Management Company shall not be required to aggregate its holdings with the holdings managed by the Management Company under the conditions laid down in Directive 85/611/EEC, provided such management company exercises its voting rights independently from the Parent Undertaking.

8.162.1 it does not interfere by giving direct or indirect instructions or it does not interfere in any other way in the exercise of the voting rights held by that Management Company; and

8.162.2 the management company is free to exercise, independently of the parent undertaking, the voting rights attached to the assets it manages.

Where the parent undertaking, or another controlled undertaking of the parent undertaking, has invested in holdings managed by such Management Company and the Management Company has no discretion to exercise the voting rights attached to such holdings and may only exercise such voting rights under direct or indirect instructions from the parent or another controlled undertaking of the parent undertaking, the holdings of the parent undertaking shall be aggregated with its holdings through the Management Company.

8.163 The parent undertaking of an investment firm authorised under Directive 2004/39/EC shall not be required to aggregate its holdings with the holdings which such investment firm manages on a client-by-client basis within the meaning of Art 4(1), point 9, of Directive 2004/39/EC provided that:

8.163.1 the investment firm is authorised to provide such portfolio management under point 4 of Section A of Annex I to Directive 2004/39/EC;

8.163.2 it may only exercise the voting rights attached to such units under instructions given in writing or by electronic means or it ensures that individual portfolio management services are conducted independently of any other services under conditions equivalent to those provided for under Directive 85/611/EEC by putting into place appropriate mechanisms; and

8.163.3 the investment firm exercises its voting rights independently from the parent undertaking;

8.163.4 it does not interfere by giving direct or indirect instructions or it does not interfere in any other way in the exercise of the voting rights held by that investment firm;

8.163.5 the investment firm is free to exercise, independently of the parent undertaking, the voting rights attached to the assets it manages.

Where the parent undertaking, or another controlled undertaking of the parent undertaking, has invested in holdings managed by such investment firm and the investment firm has no discretion to exercise the voting rights attached to such holdings and may only exercise such voting rights under direct or indirect instructions from the parent or another controlled undertaking of the parent undertaking, the holdings of the parent undertaking shall be aggregated with its holdings through the investment firm.

8.164 A Parent Undertaking which does not aggregate its holdings in terms of Capital Markets Rules 8.162 or 8.163 shall, without delay, notify to the MFSA the following information:

- 8.164.1 a list of the names of those Management Companies and investment firms, indicating the competent authorities that supervise them or that no competent authority supervises them, but with no reference to the issuers concerned;
- 8.164.2 in the case of a Management Company, a statement that the Parent Undertaking complies with the conditions laid down in Capital Markets Rules 8.162.
- 8.164.3 in the case of an investment firm, a statement that the Parent Undertaking complies with the conditions laid down in Capital Markets Rules 8.163.4 and 8.163.5.
- 8.165 The Parent Undertaking shall update the list referred to in Capital Markets Rule 8.164.1 on an ongoing basis.
- 8.166 Where a Parent Undertaking intends to avail itself of the exemptions contained in Capital Markets Rules 8.162 or 8.163 only in relation to the financial instruments referred to in Capital Markets Rule 8.151, it shall notify to the MFSA only the list referred to in Capital Markets Rule 8.164.1.
- 8.167 The MFSA may request a Parent Undertaking of a Management Company or of an investment firm to demonstrate that:
- 8.167.1 the organisational structures of the Parent Undertaking and the Management Company or investment firm are such that the voting rights are exercised independently of the Parent Undertaking;
- 8.167.2 the persons who decide how the voting rights are to be exercised act independently;
- 8.167.3 if the Parent Undertaking is a client of its Management Company or investment firm or has holding in the assets managed by the Management Company or investment firm, there is a clear written mandate for an arms-length customer relationship between the Parent Undertaking and the Management Company or investment firm.
- 8.168 The Parent Undertaking shall be deemed to satisfy Capital Markets Rule 8.167.1 if as a minimum the Parent Undertaking and the Management Company or investment firm have established written policies and procedures that are reasonably designed to prevent the distribution of information between the Parent Undertaking and the Management Company or investment firm in relation to the exercise of voting rights.
- 8.169 Undertakings whose registered office is not in a Member or EEA State which would have required an authorization in accordance with Article 5(1) of Directive 85/611/EEC or, with regard to portfolio management under point 4 of section A of Annex I to Directive 2004/39/EC if it had its registered office or, only in the case of an investment firm, its head office within the European Union, shall also be exempted from aggregating holdings with the holdings of its parent undertaking under the requirements laid down in Capital Markets Rules 8.162 and 8.163 provided that they comply with equivalent conditions of independence as Management Companies or investment firms.
- 8.170 The undertakings referred to in Capital Markets Rule 8.169 shall be considered by the MFSA to be subject to equivalent requirements as those prescribed by Capital Markets Rules 8.162 and 8.163 where, under the law of that country, the management company or investment firm is required to meet the following conditions:

- 8.170.1 the Management Company or investment firm is required to be free in all situations to exercise, the voting rights attached to the assets it manages independently of its Parent Undertaking;
- 8.170.2 the Management Company or investment firm is required to disregard the interests of the Parent Undertaking or of any other Controlled Undertaking of the Parent Undertaking whenever conflicts of interest arise.
- 8.171 The Parent Undertaking of the Management Companies or investment firms referred to in Capital Markets Rule 8.170 shall comply with the notification requirements laid down in Capital Markets Rules 8.164.1 and 8.166 and shall also make a statement that, in the case of each Management Company or investment firm concerned, the Parent Undertaking complies with the conditions laid down in Capital Markets Rule 8.120a above.
- 8.172 The MFSA may request the Parent Undertaking of the Management Companies or investment firms referred to in Capital Markets Rule 8.170 to demonstrate that the requirements laid down in Capital Markets Rule 8.167 are satisfied.
- Calendar of Trading Days.*
- 8.173 For the purposes of Capital Markets Rules 8.157, 8.175 and 8.179, the calendar of trading days of the Home Member State of the Scheme shall apply.
- 8.174 The MFSA shall publish on its website the calendar of trading days of the different regulated markets situated or operating in Malta.
- 8.175 Upon receipt of the notification in terms of Capital Markets Rule 8.138 but no later than three trading days thereafter, the Scheme shall also make a Company Announcement including all the information contained in the notification.
- 8.176 A Scheme whose registered office is in a non-EU or EEA State shall be considered by the MFSA to be subject to equivalent requirements as those prescribed by Capital Markets Rule 8.175 where, under the law of that country, the time period within which such Scheme shall be notified of major holdings and within which it shall disclose those major holdings to the public is in total equal to or shorter than seven trading days.
- 8.177 In the case of a Scheme whose registered office is in a non-EU or EEA State, the time-frames for the notification of major holdings to the Scheme and for the subsequent disclosure to the public by the Scheme may be different from those set out in Capital Markets Rules 8.157 and 8.175.
- 8.178 Notwithstanding Capital Markets Rule 8.175 a Scheme shall disclose the information received in the notifications mentioned in Capital Markets Rule 8.159, by those notifications not later than 1<sup>st</sup> June, 2007.
- 8.179 Where a Scheme acquires or disposes of its own units, either itself or through a person acting in his own name but on the Scheme's behalf, the Scheme shall make a Company Announcement in the English or Maltese language without delay through the Regulated Market as soon as possible, but not later than four trading days following such acquisition or disposal where that proportion reaches, exceeds or falls below the thresholds of 5% or 10% of the voting rights. The Company Announcement shall disclose the proportion of the Scheme's holding in its own units, following the acquisition or sale referred to above.

The proportion of such holding shall be calculated on the basis of the total number of units to which voting rights are attached.

*Additional Notifications*

- 8.180 A Scheme or a person who has applied for admissibility to trading on a Regulated Market without the Scheme's consent, where applicable, must make a Company Announcement in the English or Maltese language without delay through the Regulated Market with regards to the following:
- 8.180.1 price-sensitive facts which arise in its sphere of activity and which are not public knowledge;
  - 8.180.2 any information concerning the Scheme or any of its Subsidiaries necessary to avoid the establishment of a false market in its units;
  - 8.180.3 information of any major new developments in its sphere of activity which are not public knowledge which may:
    - 8.180.3.1 lead to substantial movement in the price of its units; or
    - 8.180.3.2 or significantly affect its ability to meet its commitments;
  - 8.180.4 the date fixed for any board meeting of the Scheme at which the declaration or recommendation or payment of a dividend on units authorised as Admissible to Listing is expected to be decided, or at which any announcement of the profits or losses in respect of any year, half-year or other period is to be approved for publication;
  - 8.180.5 any decision by the Directors of the Scheme to declare any dividend or other distribution on units Admissible to Listing or not to declare any dividend units authorised as Admissible to Listing or relating to profits;
  - 8.180.6 the filing of a winding-up application;
  - 8.180.7 any resolution for the merger or amalgamation of the Scheme and any agreement entered into in connection with any acquisition or realisation of assets or any transaction outside the ordinary course of business of the Scheme and/or its Subsidiaries which is likely to materially affect the price of its units;
  - 8.180.8 indicating any change in the rights attaching to any class of units issued by the Scheme.
  - 8.180.9 the effect, if any, of any issue of further units on the terms of the exercise of rights under options, warrants and convertible units;
  - 8.180.10 the results of any new issue or Public Offer of units. Where the units are subject to an underwriting arrangement the Scheme may at its discretion, delay notifying the MFSA until the obligations by the underwriter to take or procure others to take units are finally determined or lapse. In the case of an issue or offer of units which is not underwritten, notification of the result must be made as soon as it is known;
  - 8.180.11 all resolutions put to a general meeting of the Scheme which are not Ordinary Business and immediately after such meeting whether or not the resolutions were carried;
  - 8.180.12 any change of address of the registered office of the Scheme;
  - 8.180.13 any proposed changes to the Memorandum and Articles of

- Association of the Scheme;
- 8.180.14 the intention to Discontinue Listing by the Scheme;
- 8.180.15 a statement indicating where the audited Annual Financial Report and Half Yearly Financial Report have been made available to the public
- 8.180.16 indicating the total number of voting rights and capital, at the end of each calendar month during which an increase or decrease of such total number has occurred;
- 8.180.17 the matters referred to in Capital Markets Rule 8.195 (preliminary results)

Where the Scheme is Admitted to Trading on a Regulated Market in Malta and Malta is the only host Member or EEA State, the Scheme or a person who has applied for admission to trading on a Regulated Market without the Scheme's consent is obliged to make a Company Announcement in terms of Capital Markets Rules 8.139, 8.175, 8.179 and 8.180.8 and also provides such information to the Officially Appointed Mechanism.

- 8.181 A Scheme whose registered office is in a non-EU or EEA State shall be considered by the MFSA to be subject to equivalent requirements as those prescribed by Capital Markets Rules 8.180 where, under the law of that country, the Scheme is required to comply with the following conditions:
  - 8.181.1 in the case of a Scheme allowed to hold up to a maximum of 5 % of its own shares to which voting rights are attached, it is required to make a notification whenever that threshold is reached or crossed;
  - 8.181.2 in the case of a Scheme allowed to hold up to a maximum of between 5 % and 10 % of its own shares to which voting rights are attached, it is required to make a notification whenever the 5% threshold or that maximum threshold is reached or crossed;
  - 8.181.3 in the case of a Scheme allowed to hold more than 10 % of its own shares to which voting rights are attached, it is required to make a notification whenever the 5 % threshold or the 10 % threshold is reached or crossed.
- 8.182 For the purposes of Capital Markets Rule 8.180.16, a Scheme whose registered office is in a non-EU or EEA State shall be considered by the MFSA to be subject to equivalent requirements as those prescribed by Capital Markets Rule 8.180.16 where, under the law of that country, the Scheme is required to disclose to the public the total number of voting rights and capital within thirty (30) calendar days after an increase or decrease of such total number has occurred.
- 8.183 The MFSA shall require that information disclosed in a non Member or EEA State, which may be of importance for the public in Malta or another EEA State is disclosed in terms of Capital Markets Rules 8.82 to 8.88 and 8.180.

*Directors (including Directors of the Manager in the case of a Unit Trust)*

- 8.184 Copies of the Directors' service contracts, if any, shall be made available for inspection to the general public:
  - 8.184.1 at the registered office of the company, or in the case of an Overseas Company, at the office of the Sponsor during Normal Business Hours from the date of the notice convening the Annual General

- Meeting up to close of the meeting; and
- 8.184.2 throughout the meeting at the place where the Annual General Meeting is being held.
- 8.185 A Scheme shall notify the MFSA without delay of any change in the holding of its Units by any Director and/or of any person connected with the Director. The communication shall include the following:
- 8.185.1 the date on which the transaction giving rise to the interest (or cessation of the interest) was effected;
- 8.185.2 the price, amount and class of units concerned;
- 8.185.3 the nature of the transaction and the nature and extent of the Director's interest in the transaction; and
- 8.185.4 the number of Units held and the percentage holding of the Director following the transaction.

The above information is required to be communicated by the Scheme insofar as it is known to the Scheme. The Scheme, however, shall ensure that the Directors disclose all the necessary information in time to enable the Scheme to comply with this requirement.

*Consultation with the MFSA and Maintenance of Information*

- 8.186 The Scheme shall immediately notify the MFSA of:
- 8.186.1 any changes in the general character or nature of the Scheme; and
- 8.186.2 any renewal or termination of or variation to the Scheme.
- 8.187 The MFSA shall be consulted in advance of any event of which the Scheme is aware and which is relevant to the maintenance of Admissibility by the Scheme.
- 8.188 The Scheme shall maintain a complete file of all advertisements, brochures, leaflets and other documents issued with a view to effecting or stimulating sales or purchases of Units. The file shall be produced to the MFSA or its representative on demand.

*Other Continuing Obligations*

- 8.189 Besides complying with the Continuing Obligations contained in this section, Schemes having listed Units shall also ensure that the following obligations shall be observed so long as the Units remain authorised as Admissible to Listing:
- 8.189.1 the respective obligations of the Scheme and/or its Manager under the constitutional documents of the Scheme and the applicable legal and regulatory requirements shall be complied with;
- 8.189.2 the amount of the charges and expenses (to the extent borne by the Scheme) of the Managers, the trustee and any agent of the Managers or trustee, the Investment Adviser or any sub-adviser or any custodian or sub-custodian, shall be clearly set out in each Annual Report issued by the Scheme;
- 8.189.3 all Circulars issued in respect of the sale of Units in the Scheme shall clearly state any terms or conditions under which the Managers undertake to repurchase Units in the Scheme;
- 8.189.4 the Scheme shall notify the following information to the MFSA without delay, and in any event within one (1) month of the end of

each distribution or allocation period:

- 8.189.4.1 the total gross and net income per Unit (before charging expenses to the Scheme);
- 8.189.4.2 the net amount per Unit or share (after allowing for charges and adjustments) to be distributed or allocated, together with the gross equivalent attributable to the distribution or allocation period;
- 8.189.4.3 the date of the striking of holders register balances; and
- 8.189.4.4 any date on and from which trading ex-distribution (where applicable) will take place.

*Exemptions*

8.190 Where a Scheme is Admitted to Trading in Malta but its registered office is not in a Member or EEA State, the MFSA may exempt that Scheme from the requirements of the following Capital Markets Rules 8.104 to 8.109, 8.114, 8.122 to 8.131, 8.133 to 8.135, 8.137 to 8.172, 8.179 and 8.180.16.

Provided that the MFSA considers that the Scheme is subject to equivalent legal requirements.

8.191

*Cooperation with other regulatory authorities*

8.192 The MFSA shall cooperate with other regulatory authorities for the purpose of assisting other regulatory authorities in carrying out their duties and making use of their powers, particularly for the following purposes:

- 8.192.1 Exchange of information and cooperation when a Scheme has more than one home regulatory authority;
- 8.192.2 transfer of the approval of a Prospectus to the regulatory authority of another Member State or EEA State.
- 8.192.3 When requiring suspension or prohibition of trading for securities traded in various Member States or EEA States in order to ensure a level playing field between trading venues and protection of investors.

8.193 Where Malta is the Host Member State and the MFSA finds that breaches have been committed by the Scheme or the financial institutions responsible for seeking Admissibility to Listing, it shall refer those findings to the regulatory authority of the Home Member State or EEA State.

8.194 If measures taken by the regulatory authority of the Home Member State or EEA State do not prevent the Scheme or the financial institutions responsible for seeking Admissibility to Listing, from breaching the relevant provisions of these Capital Markets Rules, the MFSA shall, after informing the regulatory authority of the Home Member State or EEA State, take all the appropriate measures in order to protect investors.



*Preliminary Statement of Annual Results*

- 8.195 A preliminary statement of annual results must
- 8.195.1 Include:
- 8.195.1.1 a condensed balance sheet;
  - 8.195.1.2 a condensed income statement;
  - 8.195.1.3 a condensed statement of changes in equity;
  - 8.195.1.4 a condensed cash flow statement;
  - 8.195.1.5 explanatory notes and any significant additional information necessary of the purpose of assessing the results being announced;
  - 8.195.1.6 a statement that the annual results have been agreed with the Auditors and if the Auditors' report is likely to be qualified, give details of the nature of the qualification; and
    - 8.195.1.6.1 any decision to pay or make any dividend or other distribution on Equity Securities authorised as Admissible to Listing or to withhold any dividend or interest payment on Securities authorised as Admissible to Listing giving details of;
    - 8.195.1.6.2 the exact net amount payable per Share;
    - 8.195.1.6.3 the payment date; and
    - 8.195.1.6.4 the cut off date when the Register is closed for the purpose of distribution
- 8.196.2 be announced to the market by way of a Company Announcement in terms of Capital Markets Rule 5.16 without delay after Board's approval.

## Section VI – Exchange Traded Funds

### Part A - Application Procedures and Requirements for open ended Schemes seeking Authorisation for Admissibility for Listing

#### *Introduction*

8.197 This section applies to the Admissibility for Listing of open ended Scheme which once their Units have been admitted to the official list of a Regulated Market will satisfy the below definition of Exchange Traded Funds.

For the purposes of this section an Exchange Traded Fund or ETF means an open ended Scheme:

- (a) which is an index tracker fund or an actively managed exchange traded fund; and
- (b) whose Units have been admitted to the official list of a Regulated Market and are traded on a Regulated Market; and
- (c) which is authorised and regulated as a UCITS or such other EU regulated Scheme

#### *Conditions to be fulfilled by a Scheme seeking authorisation for Admissibility for Listing*

8.198 An ETF should fulfil all the conditions which need to be fulfilled by a Scheme in terms of Section I – Application Procedures and Requirements for open ended Schemes seeking Authorisation for Admissibility for Listing.

8.199 An ETF should also fulfil the following conditions:

8.199.1 Service providers to an Applicant must be free of conflicts between duties to the Applicant and duties owed by them to third parties and other interests, unless it can be demonstrated that arrangements are in place to avoid detriment to the Applicant's interests.

8.199.2 Units of the same class may not be issued at a price which is less than the net asset value per Unit of that class at the time of such issue unless authorised by a majority of the unitholders of that class or offered first on a pro-rata basis to those unitholders.

### Part B – Continuing Obligations of ETFs Authorised as Admissible for Listing

8.200 An ETF is required to comply with the continuing obligations as set out in Section II - Continuing Obligations of Open ended Schemes Authorised as Admissible for Primary Listing with the exception of Capital Markets Rule 8.25.1.

8.201 An actively managed ETF should be required to regularly report and disseminate indicative net asset values at appropriate intervals through a recognised data provider.

Appendix 8.1  
(Capital Markets Rule 8.9)

Formal Application for Authorisation for Admissibility to Listing of Collective Investment Schemes

(To be typed on the letter-head of the Collective Investment Scheme applying for authorisation for Admissibility to Listing)

Date .....

To:  
MALTA FINANCIAL SERVICES AUTHORITY  
ATTARD

Dear Sir

1. We (..... hereby apply) (are instructed by .....to lodge an application) for authorisation for the admissibility of the securities referred to in Paragraph 4 below to listing, as a primary/secondary listing in Malta, in accordance with and subject to the Capital Markets Rules of the MFSA.
2. (.....) is a Collective Investment Scheme which (i) has been duly licensed by the MFSA pursuant to Section 6 of the Investment Services Act on ..... with Licence No. ....; or (ii) is established in (.....)
3. Application is presently being made for the authorisation for the Admissibility to Listing of ..... (number of) Units.
4. The securities for which application is presently being made :-
  - (a) are identical in all respects/are divided into the following classes :  
.....  
.....
  - (b) are not authorised admitted to listing on another Regulated Market or overseas stock exchange /are listed on the following Regulated Market/s or overseas stock exchange/s  
.....  
.....  
.....
  - (c) have been in the previous six (6) months, are or will be the subject of an application for listing on the following Regulated Market/s or overseas stock exchange/s:  
.....  
.....
5. We declare that:

- (a) (i) the Collective Investment Scheme has been licensed by the MFSA pursuant to Section 6 of the Investment Services Act, 1994 and that such licence is currently in force and that we know of no reasons why such licence may be withdrawn; or
  - (ii) the Collective Investment Scheme has been established in (.....) since (.....) and that its units will be marketed in Malta.
  - (b) that the Scheme complies and will comply in all material respects with the Rules in respect of Collective Investment Schemes as issued from time to time by the MFSA or by the Competent Authority in the Jurisdiction where it is established (as applicable);
  - (c) all information required to be included in the Equivalent Offering Document/explanatory memorandum by virtue of the abovementioned Regulations, the Capital Markets Rules, the Companies Act, the Financial Markets Act as well as its Capital Markets Rules and any other applicable legislation has been included therein or, if the final version has not yet been submitted (or reviewed) will be included therein before it is so submitted; and
  - (d) there are no other facts bearing on the Scheme's application for listing such securities which, in our opinion, should be disclosed to the MFSA.
6. We undertake to comply with the provisions of the MFSA and with the Capital Markets Rules in force from time to time.

Yours faithfully

Signed .....  
 Name:  
 for and on behalf of  
 (Management Company,  
 Scheme)

Signed .....  
 Name:  
 for and on behalf of  
 (Sponsor's Name)