MFSA MALTA FINANCIAL SERVICES AUTHORITY

INVESTMENT SERVICES RULES FOR RETAIL COLLECTIVE INVESTMENT SCHEMES

PART A: THE APPLICATION PROCESS

CONTENTS

REVISIONS LOG

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5.00	4 September 2023	See: Circular dated 4 September 2023 on Various Amendments to the Investment Services Rulebooks

SECTION 1 Scope

R1-1.1 Regulation of Collective Investment Schemes in terms of the Investment Services Act, 1994

R1-1.1.1 Collective investment schemes, including UCITS and retail Alternative Investment Funds ("AIFs") are regulated by the Investment Services Act[1] (the "Act") which provides the statutory basis for regulating collective investment schemes constituted in or operating in or from Malta. Retail AIFs and UCITS (hereinafter collectively referred to as "retail CISs") constitute two categories of collective investment schemes which fall within the provisions of the Act.

R1-1.2 Definitions

R1-1.2.1 The Act defines a collective investment scheme as any scheme or arrangement which has as its object or as one of its objects the collective investment of capital acquired by means of an offer of units for subscription, sale or exchange and which has the following characteristics:

a. the scheme or arrangement operates according to the principle of risk spreading; and either

b. the contributions of the participants and the profits or income out of which payments are to be made to them are pooled; or

c. at the request of the holders, units are or are to be repurchased or redeemed out of the assets of the Scheme or arrangement, continuously or in blocks at short intervals; or

d. units are, or have been, or will be issued continuously or in blocks at short intervals.

The Act also provides that an AIF that is not promoted to retail investors and that does not have the characteristics listed in paragraph (a) above shall only be deemed to be a collective investment scheme, if the scheme, in specific circumstances as established by regulations under the Act, is exempt from such requirement and satisfies the conditions that may be prescribed.

R1-1.2.2 The Act defines a "UCITS" as meaning an undertaking for collective investment in transferable securities in terms of the UCITS Directive[2]. A UCITS is defined as an undertaking:

[1] Chapter 370 – Laws of Malta

[2] Directive 2009/65/EC of the European Parliament and of the Council of 13 July on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).

a. with the sole object of collective investment in transferable securities or in other liquid financial assets as specified in Part BII of these Investment Services Rules, of capital raised from the public and which operate on the principle of risk spreading; and

b. with units which are, at the request of holders repurchased or redeemed, directly or indirectly, out of those undertakings' assets. Action taken by a UCITS to ensure that the stock exchange value of its units does not significantly vary from their net asset value shall be regarded as equivalent to such repurchase or redemption.

R1-1.2.3 The Act defines an "AIF" as being a collective investment scheme, including the sub funds thereof, which raises capital from a number of investors with a view to investing it in accordance with a defined investment policy for the benefit of those investors, and which does not qualify as a UCITS Scheme in terms of the UCITS Directive.

In terms of the Alternative Investment Fund Managers Directive[3] ("AIFMD"), the following undertakings shall not be considered as AIFs:

a. a holding company;

b. an institution for occupational retirement provision which is covered by Directive 2003/41/EC;

c. employee participation schemes or employee savings schemes;

d. securitisation special purpose vehicles.

R1-1.2.4 The exclusions referred to in R1-1.2.3 and further exemptions can be granted from the requirements to obtain a collective investment scheme licence in terms of the provisions of the Investment Services Act (Exemption) Regulations[4] and the Investment Services Act (Recognition of Private Collective Investment Schemes) Regulations[5].

[3] Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers.
[4] S.L. 370.02
[5] S.L. 370.06

SECTION 2 Criteria which the MFSA will apply in considering an application for a Licence and ongoing regulatory requirements

R2-2.1 General Information

R2-2.1.1 The MFSA will grant a collective investment scheme licence if it is satisfied, that the scheme will comply in all respects with the provisions of the Act, the applicable Regulations and these Investment Services Rules. Furthermore, the MFSA must also be satisfied that the Directors and officers, or in the case of a unit trust or limited partnership, its Trustee(s) or General Partner(s) respectively, are "fit and proper" persons to carry out the functions required of them in connection with the retail CIS.

R2-2.1.2 In accordance with article 6(3) of the Act, when considering whether to grant or refuse a Licence, the MFSA will, in particular, have regard to:

a. the protection of investors and the general public;

b. the protection to the reputation of Malta taking into account Malta's international commitments;

c. the promotion of competition and choice; and

d. the reputation and suitability of the applicant and all other parties connected with the scheme.

R2-2.1.3 In assessing a request for a collective investment scheme licence, the MFSA will consider the nature of the scheme and the nature of the investors to whom it will be marketed. It will then look into the experience and track record of all parties who will be involved with the scheme. Such persons should be of good standing and should be competent. The MFSA reserves the right to refuse a licence if it does not approve a party involved with the scheme.

R2-2.1.4 Even though the Act provides for the licencing of different categories of schemes, the MFSA applies the same standards relating to the "fit and proper" status of the applicant and its service providers.

R2-2.1.5 The "fit and proper" test is one which an applicant and a licenced entity must satisfy on a continuing basis. The MFSA assesses each case on its own merits and on the basis of the relevant circumstances.

R2-2.1.6 Nonetheless, the onus of proving that it meets the required standards on licensing and on an on-going basis rests on the applicant and/or licensed scheme as the case may be, including but not limited to, their fitness and

properness.

R2-2.1.7 In carrying out the “fit and proper” test, the MFSA adopts a cumulative approach. It may decide that a scheme has failed the test after considering various circumstances, each of which on its own may or would not lead to that conclusion. For this reason, it is essential that the information provided to the MFSA in truthful and as complete as possible.

R2-2.1.8 When arriving at its decision as to whether an applicant has met the required standards, the MFSA will take account both of what is said and of what ought to have been disclosed. It should be noted that it is an offence to provide inaccurate, false or misleading information to the MFSA.

R2-2.2 Criteria which must be met to satisfy the “fit and proper” test.

R2-2.2.1 In general terms, there are three criteria which must be met, to satisfy the "fit and proper" test namely: (a) integrity; (b) competence; and (c) solvency.

R2-2.2.2 Integrity requires that the scheme, and its officers and its service providers acting honestly and in a trustworthy fashion.

R2-2.2.3 Competence means that the persons responsible for the management of the scheme must be able to demonstrate an acceptable amount of knowledge, professional expertise and experience. The degree of competence required will depend upon the job being performed. The MFSA will take into account the qualifications, experience and skills of those involved.

R2-2.2.4 Solvency involves ensuring that proper financial controls and management of liquidity and capital is applied.

SECTION 3 Categories of retail collective investment schemes

R3-3.1 General Information

R3-3.1.1 The MFSA's regulatory regime for retail CISs caters for two principal categories namely:

a. Maltese retail AIFs; and

b. Maltese UCITS Schemes.

In addition, reference must also be made to European retail AIFs and European UCITS Schemes which are authorised by a European regulatory authority of an EU Member State or EEA State.

R3-3.1.2 A retail CIS may be established as:

a. an investment company with variable share capital (SICAV) under the Companies Act (Investment Companies with Variable Share Capital) Regulations[6];

b. an incorporated cell company under the Companies Act (SICAV Incorporated Cell Company) Regulations[7];

c. an incorporated cell of a recognised incorporated cell company ('RICC') under the Companies Act (Recognised Incorporated Cell Company) Regulations[8];

d. a limited partnership under the Companies Act[9];

e. a unit trust under the Trust and Trustees Act[10]; and

f. a contractual fund under the Investment Services Act (Contractual Funds) Regulations[11].

R3-3.2 Maltese retail AIFs

R3-3.2.1 A Maltese retail AIF is a scheme licensed in accordance with the provisions of the Act and subject to the requirements prescribed in this Part and in Section 9 of Investment Services Rules For Alternative Investment Funds Part B: Standard Licence Conditions Applicable To Alternative Investment

[6] S.L. 386.02
[7] S.L. 386.14
[8] S.L. 386.15
[9] Chapter 386 - Laws of Malta
[10] Chapter 331 – Laws of Malta
[11] S.L. 370.16

Funds.

R3-3.2.2 The marketing of a Maltese retail AIF in jurisdictions outside Malta to investors other than professional investors as defined in the Markets in Financial Instruments Directive[12] ("MiFID") is not automatic and may be allowed subject to the applicability of additional requirements in force in the host Member State as prescribed in Article 43 of the AIFMD.

R3-3.2.3 A Maltese retail AIF which is established as a retail self-managed AIF shall be constituted in the form of an investment company with variable share capital [SICAV].

R3-3.2.4 Where a Maltese retail AIF, or its AIFM intermediaries, offers or makes its units available to retail investors or potential retail investors resident in the EEA, it shall follow the requirements laid down by Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs), as amended from time to time.

R3-3.3 Maltese UCITS schemes

R3-3.3.1 A Maltese UCITS scheme is an open-ended scheme formed in accordance with the provisions of the Act and is subject to the requirements applicable to Maltese UCITS schemes outlined in this Part and in Part BII of these Investment Services Rules. A Maltese UCITS scheme is also subject to the provisions prescribed in the Investment Services Act (Marketing of UCITS) Regulations[13].

R3-3.3.2 A Maltese UCITS scheme shall be established as a common fund only if the MFSA has approved the application of the Maltese or European Management Company to manage the fund, the fund rules and the choice of the depositary.

R3-3.3.3 A Maltese UCITS scheme shall be established as an investment company only if the MFSA has approved both its instruments of incorporation and the choice of the depositary, and where relevant the application of the designated management company to manage the investment company.

R3-3.3.4 A Maltese UCITS scheme which is established as a self-managed Maltese UCITS scheme shall be constituted in the form of an investment company with variable share capital and shall comply with the provisions applicable to self-managed Maltese UCITS schemes prescribed in Section 16 of Part BII

[12] Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments.
[13] S.L. 370.18

and in Appendix VIII of these Investment Services Rules.

R3-3.3.5 A Maltese UCITS scheme may market its units to the general public in Malta. It may also market its units to the general public in any Member State or EEA State (other than Malta) provided that it follows the notification procedure stipulated in the Investment Services Act (Marketing of UCITS) Regulations.

R3-3.3.6 A Maltese UCITS scheme is required to draw up a prospectus and a Key Investor Information Document ("KIID"). In drawing up the prospectus, the Maltese UCITS shall comply with the Investment Services Act (Prospectus of Collective Investment Schemes) Regulations[14] and the information outlined in Annex II to Appendix I to Part B of these Investment Services Rules. With regards to the drafting of the KIID, the Maltese UCITS scheme shall comply with the requirements prescribed in Section 6.2. of Part BII of these Rules.

R3-3.3.7 Where a Maltese UCITS Scheme seeks to offer or make sell its units to retail investors or potential retail investors resident in the EEA, it shall follow the requirements laid down by Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs), as amended from time to time.

R3-3.3.8 Where a Maltese UCITS Scheme does not seek to offer or make its units to retail investors resident in the EEA, the drafting of the Key Investor Information Document Maltese UCITS Scheme, shall comply with either

a. the requirements prescribed in Section 6.2. of Part BII of these Rules, that is, prepare a UCITS key information document, or

b. Regulation (EU) No 1286/2014.

R3-3.4 European retail AIFs

R3-3.4.1 A European AIF which would like to actively market/promote its units in Malta – either directly or through intermediaries is deemed to be "carrying on an activity in Malta" in terms of Article 4 of the Act. Such schemes may exercise a passport right in terms of the AIFMD and in terms of the Investment Services Act (Marketing of Alternative Investment Funds) Regulations[15].

R3-3.4.2 In terms of the AIFMD, such schemes would be exempt from the requirement to hold a collective investment scheme licence provided they follow the notification procedure stipulated in the Investment Services Act (Marketing of Alternative Investment Funds), Regulations and in particular regulation 6

[14] S.L. 370.04
[15] S.L. 370.21

of the said regulations which provides for marketing of units or shares of an AIF to retail investors.

R3-3.4.3 In terms of regulation 6(7) of the Investment Services Act (Marketing of AIFs) Regulations, where a European AIF is to be marketed to retail investors in Malta, the AIFM is to take the necessary measures to ensure that facilities are available in Malta to perform the following tasks:

a. process investors' subscription, payment, repurchase and redemption orders relating to the units of the AIF, in accordance with the conditions set out in the AIF's documents;

b. provide investors with information on how orders referred to in the preceding point can be made and how repurchase and redemption proceeds are paid;

c. facilitate the handling of information relating to the investors' exercise of their rights arising from their investment in the AIF in Malta;

d. make the information and documents required pursuant to Articles 22 and 23 of the AIFMD, as transposed in Maltese Law, available to investors for the purposes of inspection and obtaining copies thereof;

e. provide investors with information relevant to the tasks that the facilities perform in a durable medium; and

f. act as a contact point for communicating with the competent authority.

R3-3.4.4 The AIFM shall ensure that the facilities to perform the tasks referred to in R3-3.4.3, including electronically, are provided:

a. in Maltese or English[16]; and

b. by the AIFM itself, by a third party which is subject to regulation and supervision governing the tasks to be performed, or by both.

R3-3.4.5 For the purposes of point (b) of R3-3.4.4, where the tasks are to be performed by a third party, the appointment of the said third party shall be:

a. without prejudice to any authorisation requirement which may be required to perform the tasks referred to in R3.4.3 within the regulatory framework of the jurisdiction where the respective task will be provided; and

[16] Translations are not required to be sworn as true

b. evidenced by a written contract, which specifies which of the tasks referred to in R3-3.4.3 will not be performed by the AIFM and that the third party will receive all the relevant information and documents from the AIFM.

R3-3.5 European UCITS schemes

R3-3.5.1 A European UCITS scheme is a UCITS constituted as a unit trust, common contractual fund or investment company, harmonised in accordance with the UCITS Directive and authorised by a European regulatory authority of an EU Member State or EEA State.

R3-3.5.2 European UCITS schemes which would like to actively market/ promote their units in Malta either directly or through intermediaries[17] are deemed to be *"carrying on an activity in Malta"* in terms of Article 4 of the Act. However, such schemes may exercise a passport right in terms of the UCITS Directive. Accordingly, such schemes are exempt from the requirement to hold a collective investment scheme licence provided that they follow the notification procedure stipulated in regulation 8 of the Investment Services Act (Marketing of UCITS) Regulations as further expanded in Section 7 of this Part of the Rules which provides an indication of the scenarios that would constitute marketing/ promotion in Malta.

R3-3.5.3 Whenever a European UCITS scheme is sold exclusively on a one-to-one basis to persons in Malta, by Investment Services Licence Holders or European investment firms/ European management companies passporting into Malta, the European UCITS scheme is not deemed to be "marketing/promoting" its units in Malta as described in Section 7 of this Part and is accordingly not required to follow the notification procedure referred to above.

R3-3.5.4 Likewise, whenever an investor in Malta requests and is provided with information (including marketing material) on a European UCITS scheme, the European UCITS scheme is not required to follow the notification procedure referred to above on the basis that there is no "marketing/promotion" in Malta as the communication was initiated by the investor.

R3-3.5.5 A European UCITS scheme that is not marketed in Malta in its own right but is available for linking to unit linked policies which are themselves marketed in Malta is not deemed to be "marketing" in Malta and will accordingly not be required to follow the notification procedure.

R3-3.5.6 In terms of Regulation 9(5) of the Investment Services Act (Marketing of

[17] E.g. by means of seminars, mailshots etc.

UCITS) Regulations, a European UCITS scheme is required to satisfy the MFSA that adequate measures have been taken to ensure that facilities are available in Malta for:

a. processing subscription, repurchase and redemption orders and making other payments to unit-holders relating to the units of the European UCITS, in accordance with the conditions set out in the documents required pursuant to sub-regulation 1(a) to (c) ;

b. providing investors with information on how orders referred to in the preceding point can be made and how repurchase and redemption proceeds are paid;

c. facilitating the handling of information and access to procedures and arrangements relating to the investors' exercise of their rights arising from their investment in the European UCITS in Malta;

d. making the information and documents required pursuant to Chapter IX of the UCITS Directive as transposed in Maltese Law available to investors under the conditions laid down in Article 94 of the UCITS Directive as transposed in Maltese Law, for the purposes of inspection and obtaining copies thereof;

e. providing investors with information relevant to the tasks that the facilities perform in a durable medium; and

f. acting as a contact point for communicating with the competent authorities.

R3-3.5.7 A European UCITS scheme shall ensure that the facilities to perform the tasks referred to in R3-3.5.6, including electronically, are provided:

a. in Maltese or English[18]; and

b. by itself, by a third party which is subject to regulation and supervision governing the tasks to be performed, or by both.

R3-3.5.8 For the purposes of point (b) of R3-3.5.7, where the tasks are to be performed by a third party, the appointment of the said third party shall be:

a. without prejudice to any authorisation requirement which may be required to perform the tasks referred to in R3.5.6 within the regulatory framework of the jurisdiction where the respective task will be provided; and

b. evidenced by a written contract, which specifies which of the tasks referred to in R3-3.5.6 will not be performed by the European UCITS

[18] Translations are not required to be sworn as true

scheme and that the third party will receive all the relevant information and documents from the European UCITS scheme.

R3-3.5.9 Once a European UCITS scheme has accessed the Maltese market, the MFSA shall be provided with relevant information on the manner in which the requirements referred to in R3-3.5.6 - R3-3.5.8 above will be satisfied.

SECTION 4 Service Providers

R4-4.1 General Information

R4-4.1.1 The MFSA ordinarily expects a retail CIS to appoint suitable service providers which generally include the Manager, the Depositary, the Administrator and the Investment Adviser.

R4-4.2 Manager

R4-4.2.1 A retail CIS is expected to appoint an AIFM or a UCITS management company depending on whether the scheme is established as an AIF or as a UCITS.

R4-4.2.2 A Maltese retail AIF may appoint a Maltese or a European AIFM. A Maltese AIFM shall be licenced in terms of the Act and shall comply with the requirements prescribed in Part BIII of the Investment Services Rules for Investment Services Providers.

R4-4.2.3 A European AIFM shall comply with the requirements prescribed in regulations 6 and 7 of the Investment Services Act (Alternative Investment Fund Manager) (Passport) Regulations[19] and Part CIII of the Investment Services Rules for Investment Services Providers.

R4-4.2.4 A Maltese UCITS Scheme which is not a self-managed Maltese UCITS shall appoint a Maltese or European management company. A Maltese management company shall be licenced in terms of the Investment Services Act and shall be expected to comply with the Rules prescribed in Part BII of the Investment Services Rules for Investment Services Providers.

R4-4.2.5 A European management company may be appointed as long as it complies with regulations 9 and 10 respectively of the Investment Services Act (UCITS Management Company Passport) Regulations[20] and Part CII of the Investment Services Rules for Investment Service Providers.

R4-4.3 Fund Administrator

R4-4.3.1 Administration services in relation to a Maltese retail CIS may be carried out by the manager or by a delegated third-party administrator in terms of the rules on delegation prescribed in the Investment Services Rules for Investment Services Providers applicable to UCITS management companies and AIFMs.

[19] S.L. 370.22
[20] S.L. 370.20

R4-4.3.2 Where the proposed fund administrator is established in Malta, it shall be in possession of a Fund Administration Recognition Certificate issued in terms of article 9A of the Act.

R4-4.4 Depositary

R4-4.4.1 A retail CIS is required to appoint a depositary responsible for the safe keeping, monitoring and oversight of the scheme's assets.

R4-4.4.2 The depositary shall be based in Malta and shall be in possession of an Investment Services Licence authorising the entity to act as a Depositary issued by the MFSA in terms of the Act and the Investment Services Act (Custodians of Collective Investment Schemes) Regulations[21].

R4-4.5 Investment Adviser

R4-4.5.1 The Investment Adviser is a person responsible for the provision of investment advice to the retail CIS or its manager with respect to amongst others the investment and re-investment of the assets of the scheme. It is understood that the investment adviser will not have any discretion with respect to the investment and re-investment of the assets of the scheme.

R4-4.5.2 Retail CISs are generally not required to appoint a third-party investment adviser. Moreover, the proposed investment adviser need not be established and regulated in Malta.

R4-4.5.3 Where the investment adviser is appointed by the scheme the appointment of such investment advisor shall be subject to the MFSA's approval. Where the investment advisor is appointed by the manager, rather than by the scheme such appointment will need to be done by the AIFM in accordance with the applicable Investment Services Rules for Investment Services Providers and will also be subject to the MFSA's approval. Where the proposal includes the appointment of an investment adviser established in Malta, the adviser shall be in possession of an Investment Services Licence authorising the entity to act as an Investment Firm issued by the MFSA in terms of article 6 of the Act and shall be duly authorised to provide investment advice to collective investment schemes.

[21] L.N. 114 of 2016

SECTION 5 Applications for a Collective Investment Scheme Licence

R5-5.1 The application process – Maltese retail AIFs and Maltese UCITS schemes

R5-5.1.1 When submitting an application for a collective investment scheme licence under the Act, thepromoter should ensure that the appropriate Application Form[22] is completed.

R5-5.1.2 The application requirements which must be satisfied by Maltese retail AIFs and Maltese UCITS schemes, are summarised below.

R5-5.1.3 There are three phases to the application process namely [i] phase one being the preparatory phase; [ii] phase two being the pre-licencing phase; and [iii] phase three being the post-licencing phase.

R5-5.2 Phases of the licence application process

R5-5.2.1 Phase One – Preparatory Phase

a. The MFSA recommends that the promoters complete the application form and submit it with the supporting documents as specified in the application form itself. The application form must be signed by the promoter and shall be complete with all the information and documents required. The application form and the supporting documentation will be reviewed and comments are provided to the applicant generally within three weeks from submission of the application documents.

b. The MFSA may ask for more information and may make such further enquiries as it considers necessary. Furthermore, the MFSA carries out the necessary due diligence checks at this stage.

c. The MFSA will consider the nature of the proposed scheme and will apply the rules included in Parts BI or BII of this Rulebook depending on whether the scheme is a retail AIF or a UCITS. The rules included in Part BI and BII represent the ongoing requirements to which the scheme will be subject, if and when licensed.

R5-5.2.2 Phase Two – Pre-Licensing Phase

a. Once the MFSA concludes the review of the application and

[22] ScheduleAA07-Funds [including AX10 and AX11 in the case of self-managed retail AIFs and self-managed UCITS respectively]

supporting documents, it will issue its 'in principle' approval for the issue of a licence. The 'in principle' approval is valid for a period of **three months** during which, the applicant will be required to finalise any outstanding matters. Should the three months elapse without the satisfactory resolution of all pre-licencing outstanding issues; the 'in principle approval' issued will cease to have effect.

b. Once any outstanding matters have been finalised, the application form and the supporting documentation are endorsed by the members of the governing body of the scheme and are resubmitted to MFSA.

c. The MFSA will proceed with the issue of a licence as soon as all pre-licensing matters outlined in the 'in principle' approval are resolved.

R5-5.2.3 Phase Three – Post-Licensing/Pre-Commencement of Business Phase

R5-5.2.3.1 The Applicant may be required to satisfy a number of post-licensing matters prior to the formal commencement of business.

R5-5.3 Application documents

R5-5.3.1 An applicant for a collective investment scheme licence in respect of a retail CIS is ordinarily required to submit the following documents:

i. application form ;
ii. application fee;
iii. draft version of the instruments of incorporation[23];
iv. draft version of the prospectus and where applicable the KIID; and
v. a detailed marketing plan;
vi. draft management, administration, custody and advisory agreements as applicable;
vii. resolution of the governing body[24] of the scheme:
    a. confirming the intention of the governing body to apply for a collective investment scheme licence in favour of the retail CIS[25];
    b. identifying the person(s) responsible for signing the

[23] Memorandum and articles of association in the case of a SICAV, deed of partnership in the case of a limited partnership, trust deed/ deed of constitution (either by public deed or private writing) in the case of unit trust or contractual fund.

[24] Board of directors in the case where the scheme is established as an investment company; general partners where the scheme is established as a limited partnership; manager in the case of unit trust.

[25] Where the scheme is established as an incorporated cell company, the resolution must confirm the intention of the board of directors to apply for a collective investment scheme licence in favour of a scheme as an incorporated cell company.

application documents;

c. identifying the person(s) responsible on behalf of the governing body of the retail CIS for the scheme's compliance obligations;
d. identifying the person(s) responsible on behalf of the governing body of the retail CIS for the scheme's anti-money laundering obligations;
e. approving and assuming responsibility for the contents of the prospectus and where applicable the KIID;

viii. personal questionnaires of the individuals proposed to carry out the functions of compliance officer and money laundering reporting officer

ix. personal questionnaires of the individuals proposed to carry out the functions of portfolio manager, risk manager, and investment advisor as applicable, depending on the operational arrangements of the AIF.

R5-5.3.2 In addition, where the scheme is established as an **investment company**, it is required to submit the following additional documents:

i. personal questionnaires of the directors of the scheme:
- individuals: personal questionnaires of the proposed director(s);
- corporate and regulated in a recognised jurisdiction:

(a) details of the regulatory status of the proposed corporate director(s);
(b) name of the individual(s) that will represent the corporate director on the board of directors of the scheme.

ii. in relation to the founder shareholder(s) holding more than 10% of the voting shares:
- individuals: personal questionnaires of the founder shareholder(s);
- corporate and regulated in a recognised jurisdiction: details of the regulatory status of the proposed corporate founder shareholder(s);
- corporate and not regulated in a recognised jurisdiction:

(a) personal questionnaire of the directors of the proposed corporate founder shareholder(s);
(b) personal questionnaire of the qualifying beneficial owners of the proposed corporate founder shareholder(s); and
(c) last three years' audited financial statements of the proposed corporate founder shareholder(s).

R5-5.3.3 In addition to the requirements outlined in R5-5.3.1 above, where the scheme is established as an **incorporated cell company**, it is required to submit the following additional documents:

i. personal questionnaires of the directors of the scheme:
   - individuals: personal questionnaires of the proposed director(s);
   - corporate and regulated in a recognised jurisdiction:
   (a) details of the regulatory status of the proposed corporate director(s);
   (b) name of the individual(s) that will represent the corporate director on the board of directors of the scheme.

ii. in relation to the founder shareholder(s) holding more than 10% of the voting shares:
   - individuals: personal questionnaires of the founder shareholder(s);
   - corporate and regulated in a recognised jurisdiction: details of the regulatory status of the proposed corporate founder shareholder(s);
   - corporate and not regulated in a recognised jurisdiction:
   (a) personal questionnaire of the directors of the proposed corporate founder shareholder(s);
   (b) personal questionnaire of the qualifying beneficial owners of the proposed corporate founder shareholder(s); and
   (c) last three years' audited financial statements of the proposed corporate founder shareholder(s).

R5-5.3.4 In addition to the requirements outlined in R5-5.3.1 and R5-5.3.3 above, in the case of **incorporated cells (ICs)** the following additional documents are required:

i. a copy of the agreement between the incorporated cell and the stated ICC;

ii. the draft resolution of the governing body of the IC shall include a confirmation of the governing body to apply for a collective investment scheme licence in favour of the scheme to operate as an IC of the SICAV incorporated cell company or the IC of the recognised incorporated cell company (RICC);

iii. a copy of the resolution of the board of directors of the SICAV ICC or the RICC which:
   - approves the name of the IC being established;
   - approves the terms of the memorandum and articles of association of the IC and resolves that the said memorandum and articles of association of the IC are to be entered into by the incorporated cell company; and;
   - authorises, if applicable, the subscription by the incorporated cell company of a share or shares in the IC.

iv. personal questionnaires of the directors of the scheme:
- individuals: personal questionnaires of the proposed director(s);
- corporate and regulated in a recognised jurisdiction:

(a) details of the regulatory status of the proposed corporate director(s);
(b) name of the individual(s) that will represent the corporate director on the board of directors of the scheme.

v. in relation to the founder shareholder(s) holding more than 10% of the voting shares:
- individuals: personal questionnaires of the founder shareholder(s);
- corporate and regulated in a recognised jurisdiction: details of the regulatory status of the proposed corporate founder shareholder(s);
- corporate and not regulated in a recognised jurisdiction:

(a) personal questionnaire of the directors of the proposed corporate founder shareholder(s);
(b) personal questionnaire of the qualifying beneficial owners of the proposed corporate founder shareholder(s); and
(c) last three years' audited financial statements of the proposed corporate founder shareholder(s).

R5-5.3.5 In addition to the requirements outlined in R5-5.3.1 above, in the case where the scheme is established as a **limited partnership** the following additional documents are required:

i. general partner(s) of the scheme:
- individuals: personal questionnaires of the proposed general partner(s);
- corporate, regulated in a recognised jurisdiction:

(a) details of the regulatory status of the proposed corporate general partner(s);
(b) the name of the individual(s) who will represent the corporate general partner(s);
- corporate, not regulated in a recognised jurisdiction:

(a) personal questionnaire of the directors of the proposed corporate general partner(s);
(b) personal questionnaire of the qualifying beneficial owners of the proposed corporate general partner(s);
(c) the name of the individual(s) who will represent the corporate general partner(s); and
(d) last three years audited financial statements of the proposed corporate general partner(s).

R5-5.3.6 In addition to the requirements outlined in R5-5.3.1 above, in the case where the scheme is established as a **unit trust** or **contractual fund**, the details of the regulatory status of the proposed trustee are required.

R5-5.3.7 Where the scheme is established as a self-managed retail scheme, the MFSA requires the following additional application documents:

i. personal questionnaire of the portfolio manager(s) and, where appointed of the risk manager. For the purposes of the above and (ii) below, the term portfolio manager/ risk manager should be interpreted as the person(s) in charge of the day-to-day investment management/ risk management function of the scheme, whether he/she is also a member of the investment/ risk committee or otherwise. Provided that when the investment/ risk committee is to be considered as being collectively responsible for the day-to-day investment/ risk management function of the scheme, all its members would be required to submit a personal questionnaire, and paragraphs (ii) and (iii) below shall apply to them;

ii. terms of reference regulating the procedures of the investment committee and the risk committee (if applicable);

iii. confirmation from the portfolio manager(s) (as applicable) that he/she/ they will:
   - operate in accordance with the investment objective and policy described in the scheme's prospectus in general and the investment guidelines issued by the investment committee in particular;
   - report to the investment committee on a regular basis any transactions effected on behalf of the scheme; and
   - provide to the investment committee, any information as the investment committee may require from time to time;

iv. confirmation from the portfolio manager(s)/ investment committee that they have appropriate resources available to them to ensure on-going access to the market information which they would need to take account of in making investment management decisions;

v. risk management policy.

R5-5.3.8 In addition to the requirements outlined in R5-5.3.7 above, where the scheme is established as a **self-managed retail AIF**, the MFSA requires the following additional application documents:

i. portfolio and risk management delegation agreements (where applicable);

ii. risk management policy document;

iii. programme of activities / business plan;

iv. where the self-managed retail AIF intends to cover potential professional liability risks by way of professional indemnity insurance, a copy of the cover note to the insurance policy is required.

R5-5.3.9 The MFSA reserves the right to request such additional information as it may require when processing an application for a licence.

R5-5.4 Licencing of additional sub-funds of an existing scheme

R5-5.4.1 A retail AIF or UCITS scheme constituted in the form of an umbrella fund[26] wishing to establish additional sub-funds, is ordinarily required to submit the following documents:

i. formal notification to the MFSA of its intention to apply for a licence in favour of the sub-fund(s);
ii. a confirmation from the governing body of the scheme signifying its intention to apply for a licence in favour of the sub-fund(s);
iii. a final draft of the revised prospectus and where applicable the KIID;
iv. the appropriate application fee; and
v. a draft copy of the approval by the governing body of the scheme of the revised prospectus and where applicable the KIID.

R5-5.5 Applications for the approval of additional classes of shares/ units of an existing scheme

R5-5.5.1 A retail AIF or UCITS Scheme constituted in the form of an umbrella or multi-class (i.e. without sub-funds) fund wishing to issue an additional class of shares/ units which shall not constitute a distinct sub-fund of the scheme is ordinarily required to submit the following documents:

i. formal notification to the MFSA of its intention to issue additional classes of shares/ units;
ii. a final draft of the revised prospectus and where applicable the KIID;
iii. a draft copy of the approval of the governing body of the scheme of the prospectus and where applicable the KIID; and
iv. a confirmation from the governing body of the scheme signifying

[26] i.e., having sub-funds

its intention to issue additional classes of shares/ units.

R5-5.5.2 The issue of additional classes of shares/ units within an existing scheme is not subject to any application/ supervisory fees as long as the additional classes of shares/ units do not constitute a distinct sub-fund of the scheme.

R5-5.6 Licencing timeframes applicable to UCITS

R5-5.6.1 The MFSA shall inform the management company or in the case where the scheme is a self-managed UCITS, the investment company, within **two months** of the submission of a complete application, whether or not authorisation of the UCITS has been granted.

R5-5.6.2 The MFSA shall not authorise a Maltese UCITS if it is legally prevented for example though a provision in the fund rules or instruments of incorporation from marketing its units in Malta.

R5-5.7 Licencing timeframes applicable to retail AIFs

R5-5.7.1 The MFSA shall inform an applicant for a licence to provide services as a retail self-managed AIF within three months of the submission of a complete application, whether or not authorisation has been granted. The MFSA may prolong this period for up to three additional months, where it considers necessary due to the specific circumstances of the case and after having notified the applicant accordingly.

R5-5.7.2 A self-managed retail AIF may start providing an investment service in Malta with investment strategies described in the application form submitted to the MFSA as soon as the licence is granted, but not earlier than 1 month after having submitted any missing information referred to hereunder:

a. information on arrangements made for the delegation and sub-delegation to third parties of functions;
b. the memorandum and articles of association of the retail AIF;
c. information on the arrangements made for the appointment of the depositary;
d. any additional information relating to the reporting obligations of the scheme.

R5-5.8 Listing on a regulated market

R5-5.8.1 A scheme, whether a retail AIF or a UCITS scheme which has been licenced in terms of the Act, may also be admitted to listing. An

application to that effect is made with the Listing Authority[27].

R5-5.8.2 Where an application for admissibility to listing has been submitted concurrently with an application for a collective investment scheme licence, the documents submitted as part of the application for the collective investment scheme licence need not be resubmitted as part of the application for admissibility to listing.

R5-5.8.3 In addition, provided the MFSA is informed of the scheme's intention to apply for admissibility to listing, once the documents have been approved by the MFSA, they will be deemed to be approved in relation to both the application for a collective investment scheme licence as well as in relation to the application for admissibility to listing.

R5-5.8.4 A European UCITS or European retail AIF may also apply for admissibility to listing with the Listing Authority.

[27] The MFSA is the Listing Authority in terms of the Financial Markets Act.

SECTION 6 Exercise of passport rights by European retail AIFs

R6-6.1 Notification Procedure

R6-6.1.1 This section should be read in conjunction with the Investment Services Act (Marketing of AIFs) Regulations[28]. It aims at providing an overview of the requirements applicable to European AIFs wishing to market their units in Malta in terms of the AIFMD.

R6-6.1.2 Marketing of a European AIF which is managed by an external AIFM is regulated by the provisions of regulation 5 of the Investment Services Act (Marketing of AIFs) Regulations. The European AIF, where registered in a Member State or EEA State other than Malta, shall thereafter be exempt from the provisions of article 4 of the Act as long as the conditions referred to in the regulations are fulfilled.

R6-6.1.3 The term "marketing" is to be interpreted as capturing at least the following scenarios:

(a) *Scenario 1*: an investment advertisement[29] is issued in Malta marketing/ promoting the European Retail AIF;

(b) *Scenario 2*: seminars or other meetings are organized in Malta aimed at the general public or at a class or classes of investors with a view to promote the European Retail AIF;

(c) *Scenario 3*: a circular/mail-shot or other medium of communication is used with a view to promote the European Retail AIF to persons in Malta;

(d) *Scenario 4*: the placing of brochures/ documentation pertaining to the European Retail AIF in a location which targets mainly investors in Malta (being clients of the distributor); and

(e) *Scenario 5*: direct or indirect promotion of the European Retail AIF by means of press releases.

R6-6.1.4 The scenarios included above are not exhaustive and do not necessarily capture all possible scenarios where a European Retail AIF may market its units in Malta. The term "at least" implies that the term "marketing" should not be interpreted so narrowly to include only the

[28] S.L. 370.21

[29] Article 2 of the Act defines an "investment advertisement" means any form or medium of advertising or promotional activity, other than a prospectus, the contents of which, either invites persons, or contains material calculated to induce persons: (i) to become or offer to become participants in a collective investment scheme; or (ii) to subscribe for or otherwise acquire or underwrite an instrument; or (iii) to purchase or otherwise procure an investment service.

scenarios described. European Retail AIFs may consult the MFSA should they be in doubt whether a particular scenario involves "marketing".

R6-6.1.5 For the avoidance of doubt:

(a) a European Retail AIF that is sold exclusively to persons in Malta on a one-to-one basis need not follow the notification procedure provided there is no "marketing" in Malta as described above;

(b) whenever an investor in Malta requests and is provided with information (including marketing material) on a European Retail AIF, the European Retail AIF is not deemed to be "marketing" in Malta on the basis that the communication was initiated by the investor.

(c) a European Retail AIF that is not marketed in Malta in its own right but is available for linking to unit linked policies which are themselves marketed in Malta, is not deemed to be "marketing" in Malta and will accordingly not be required to follow the notification procedure.

R6-6.2 Notification requirements

R6-6.2.1 The European AIFM shall submit to the European regulatory authority in its home Member State or EEA State a notification in respect of each European AIF which it intends to market.

R6-6.2.2 A European AIFM can market the units or shares of the European AIF to retail investors only if it is in possession of an authorisation for this purpose from the MFSA. The European AIFM shall comply with Section 10 of the Investment Services Rules for Investment Services Providers prescribing:

a. the types of AIF with respect to which an application for marketing to retail investors may be made to the MFSA;

b. the manner and form of the application for an authorisation to market an AIF to retail investors in Malta;

c. the conditions for authorisation to market to retail investors; and

d. the on-going obligations and additional requirements applicable to the marketing of AIFs to retail investors.

R6-6.2.3 The MFSA shall, no later than twenty working days after the date of receipt of a complete notification file, receive from the European

regulatory authority of the AIFM's home Member State, the complete notification file. This shall also include a statement to the effect that the European AIFM concerned is authorised to manage European AIFs with a particular investment strategy.

R6-6.2.4 The MFSA will only receive the complete notification file if the European AIFM's management of the European AIF complies with and will continue to comply with the provisions of the AIFMD.

R6-6.2.5 Upon transmission of the notification file to the MFSA, the European AIFM may start marketing the European AIF in Malta.

R6-6.3 Ongoing requirements

R6-6.3.1 European AIFMs marketing units or shares of European AIFs in Malta in terms of the AIFMD are required to keep the documentation and the translations thereof updated. Furthermore, the MFSA should be notified of any amendments to the documentation.

R6-6.3.2 Furthermore, European AIFs being marketed in Malta in terms of the AIFMD are required to pay annual supervisory fees referred to in the Investment Services Act (Fees) Regulations (Subsidiary Legislation 370.03).

R6.6.3.3 European Retail AIFs that have been authorised by the European regulatory authority of the Retail AIF home Member State to market their units in Malta in terms of the AIFMD are required to keep the documentation referred to above and the translations thereof updated. Furthermore, the European Retail AIF shall notify any amendments to the aforementioned documents to the MFSA and shall indicate where such documents can be obtained electronically.

R6.6.3.4 In the event of a change to the information provided in the notification letter submitted in accordance with R6-6.2.2, or a change regarding the share classes to be marketed, the European Retail AIF shall notify in writing the MFSA and the home Member State at least one month before implementing that change.

R6-6.4 Cross-Border Marketing Rights

R6-6.4.1 The European Retail AIF will be able to access the Maltese market as from the date of notification by the European regulatory authority of the European Retail AIF home Member State or EEA State.

R6-6.4.2 The European Retail AIF will be required to pay the relevant notification

fee outlined in the Investment Services Act (Fees) Regulations (Subsidiary Legislation 370.03) soon after the notification by the European regulatory authority.

R6-6.5 Information provided to Maltese investors by a European Retail AIF

R6-6.5.1 A European Retail AIF is required to provide Maltese retail investors with the following information and documents upon request and free of charge:

a. a prospectus;

b. an annual report for each financial year;

c. a half-yearly report covering the first six months of the financial year; and

d. the PRIIPS KID.

R6-6.5.2 The required documents are to be sent to the MFSA via e-mail on aifmdnotifications@mfsa.mt.

R6-6.5.3 Required documents must be submitted either in Maltese or in English. Translations are not required to be sworn as true.

R6-6.6 De-Notification Requirements

R6-6.6.1 A European Retail AIF may de-notify the arrangements made for marketing its units in Malta once the conditions outlined in regulation 3(12) of the Investment Services Act (Marketing of Alternative Investment Funds) Regulations are fulfilled; namely.

R6-6.6.2 The information referred to in the previous rule is to clearly describe the consequences for investors if they do not accept the offer to redeem or repurchase their units. Such information is to be provided in Maltese or English.

R6-6.6.3 As of the de-notification date, the European Retail AIF shall cease any new or further, direct or indirect, offering or placement of its units which were the subject of de-notification in Malta.

R6-6.6.4 The European Retail AIF shall submit a notification to the competent authorities of its home Member State containing the information referred to in R6-6.2.2.

SECTION 7 Exercise of Passport Rights by European UCITS Schemes

R7-7.1 General Information

R7-7.1.1 This section should be read in conjunction with the Investment Services Act (Marketing of UCITS) Regulations[30] and Commission Regulation (EU) No 584/2010[31]. It provides an overview of the requirements applicable to European UCITS Schemes wishing to market their units in Malta in terms of the UCITS Directive.

R7-7.2 Notification Procedure

R7-7.2.1 European UCITS schemes may market their units in Malta without the need to hold a collective investment scheme licence in terms of the Act, provided that the European UCITS scheme has satisfactorily completed the notification procedure outlined in regulation 8 of the Investment Services Act (Marketing of UCITS) Regulations as further described below.

R7-7.2.2 The term "marketing" is to be interpreted as capturing at least the following scenarios:

(f) *Scenario 1*: an investment advertisement[32] is issued in Malta marketing/ promoting the European UCITS scheme;

(g) *Scenario 2*: seminars or other meetings are organized in Malta aimed at the general public or at a class or classes of investors with a view to promote the European UCITS scheme;

(h) *Scenario 3*: a circular/mail-shot or other medium of communication is used with a view to promote the European UCITS scheme to persons in Malta;

(i) *Scenario 4*: the placing of brochures/ documentation pertaining to the European UCITS scheme in a location which targets mainly investors in Malta (being clients of the distributor); and

[30] S.L. 370.18

[31] Commission Regulation (EU) No 584/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards the form and content of the standard notification letter and UCITS attestation, the use of electronic communication between competent authorities for the purpose of notification, and procedures for on-the-spot verifications and investigations and the exchange of information between competent authorities

[32] Article 2 of the Act defines an "investment advertisement" means any form or medium of advertising or promotional activity, other than a prospectus, the contents of which, either invites persons, or contains material calculated to induce persons: (i) to become or offer to become participants in a collective investment scheme; or (ii) to subscribe for or otherwise acquire or underwrite an instrument; or (iii) to purchase or otherwise procure an investment service.

(j) *Scenario 5*: direct or indirect promotion of the European UCITS scheme by means of press releases.

R7-7.2.3 The scenarios included above are not exhaustive and do not necessarily capture all possible scenarios where a European UCITS scheme may market its units in Malta. The term "at least" implies that the term "marketing" should not be interpreted so narrowly to include only the scenarios described. European UCITS schemes may consult the MFSA should they be in doubt whether a particular scenario involves "marketing".

R7-7.2.4 For the avoidance of doubt:

(d) a European UCITS Scheme that is sold exclusively to persons in Malta on a one-to-one basis need not follow the notification procedure provided there is no "marketing" in Malta as described above;

(e) whenever an investor in Malta requests and is provided with information (including marketing material) on a European UCITS scheme, the European UCITS scheme is not deemed to be "marketing" in Malta on the basis that the communication was initiated by the investor.

(f) a European UCITS scheme that is not marketed in Malta in its own right but is available for linking to unit linked policies which are themselves marketed in Malta, is not deemed to be "marketing" in Malta and will accordingly not be required to follow the notification procedure.

R7-7.3 Notification Requirements

R7-7.3.1 A European UCITS scheme may market its units in Malta, provided that prior to commencement to market in Malta, the MFSA has received from the European regulatory authority of the EU Member State or EEA State a notification letter made in the form and manner prescribed in regulation 8 of the Investment Services Act (Marketing of UCITS) Regulations. The notification letter shall include the following information:

a. information on the arrangements made for marketing by the European UCITS of its units in Malta, including where relevant in respect of share classes;

b. an indication that the units of the European UCITS will be marketed by the management company that manages the European UCITS;

c. the details necessary, including the address, for the invoicing or for the communication of the applicable regulatory fees in line with the Investment Services Act (Fees) Regulations (Subsidiary Legislation 370.03);

d. information on the facilities for the performance of tasks referred to in R3-3.5.6 of this Part of the Rules;

e. the latest version of its fund rules or its instruments of incorporation and its prospectus in Maltese or English;

f. where appropriate, the latest annual report and any subsequent half-yearly report in Maltese or English;

g. the KIID translated in Maltese or English; and

h. an attestation that the European UCITS fulfils the conditions of the UCITS Directive in the manner and form prescribed by Commission Regulation 584/2010[33].

R7-7.3.2 The notifying European UCITS scheme shall take the measures necessary to ensure that facilities are available in Malta for carrying out the tasks outlined in R3-3.5.6 of this Part of the Rules by *inter alia* making the arrangements outlined in R3-3.5 of this Part of the Rules. The MFSA will not request additional documents, certification or information other than those provided above.

R7-7.4 Cross-Border Marketing Rights

R7-7.4.1 The European UCITS will be able to access the Maltese market as from the date of notification by the European regulatory authority of the UCITS home Member State or EEA State.

R7-7.4.2 The European UCITS scheme will be required to pay the relevant notification fee outlined in the Investment Services Act (Fees) Regulations (Subsidiary Legislation 370.03) soon after the notification by the European regulatory authority.

R7-7.5 On-Going Requirements

R7-7.5.1 European UCITS schemes that have been authorised by the European regulatory authority of the UCITS home Member State to market their

[33] Commission Regulation (EU) No 584/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards the form and content of the standard notification letter and UCITS attestation, the use of electronic communication between competent authorities for the purpose of notification, and procedures for on-the-spot verifications and investigations and the exchange of information between competent authorities

units in Malta in terms of the UCITS Directive are required to keep the documentation referred to above and the translations thereof updated. Furthermore, the European UCITS shall notify any amendments to the aforementioned documents to the MFSA and shall indicate where such documents can be obtained electronically.

R7-7.5.2 In the event of a change to the information provided in the notification letter submitted in accordance with R7-7.3.1, or a change regarding the share classes to be marketed, the European UCITS scheme shall notify in writing the MFSA and the home Member State at least one month before implementing that change.

R7-7.5.3 European UCITS schemes should also ensure that their marketing arrangements comply with the requirements outlined in this Part of the Rules. Any investment advertisements issued by a notified European UCITS scheme should be drawn up in compliance with the requirements outlined in R7-7.7 of this Part of the Rules.

R7-7.5.4 Furthermore, European UCITS schemes authorised to market their units in Malta in terms of the UCITS Directive are required to pay annual supervisory fees referred to in the Investment Services Act (Fees) Regulations (Subsidiary Legislation 370.03).

R7-7.6 Information provided to Maltese investors by a European UCITS scheme

R7-7.6.1 A European UCITS scheme is required to provide Maltese investors with the following information and documents upon request and free of charge:

a. a prospectus;

b. an annual report for each financial year;

c. a half-yearly report covering the first six months of the financial year; and

d. the KIID or PRIIPs KID, as applicable.

R7-7.6.2 The required documents are to be sent to the MFSA via e-mail to ucitsnotifications@mfsa.mt.

R7-7.6.3 Required documents must be submitted either in Maltese or in English. Translations are not required to be sworn as true.

R7-7.7 Investment Advertisements

R7-7.7.1 The MFSA has the right to verify that marketing information, to the exclusion of the KIID or PRIPPs KID, as applicable, the prospectus and the annual and half-yearly reports, comply with the provisions of the Act.

R7-7.7.2 Investment advertisements relating to European UCITS schemes issued in Malta shall be drawn up in compliance with Section 2, Marketing Rules, of Chapter 1, Disclosure, of the Conduct of Business Rulebook, and the related Appendix 2.. Reference should also be made to the MFSA's Guidance Notes relating to the above-mentioned Rules. In addition, where the UCITS' name includes 'pension' or 'retirement' or other similar term, or where the UCITS is promoted as suitable for private retirement planning, all advertisements pertaining to the scheme, are also to include the disclosures required under the Conduct of Business Rulebook pertaining to the local pension system.

R7-7.8 De-Notification Requirements

R7-7.8.1 A European UCITS scheme may de-notify the arrangements made for marketing its units in Malta once the conditions outlined in regulation 8(13) of the Investment Services Act (Marketing of UCITS) Regulations are fulfilled; namely:

a. a blanket offer is made to repurchase or redeem, free of any charges or deductions, all such units held by investors in Malta, which is publicly available for at least 30 working days, and is addressed, directly or through financial intermediaries, individually to all investors in Malta whose identity is known;

b. the intention to terminate arrangements made for marketing such units in Malta is made public by means of a publicly available medium, including by electronic means, which is customary for marketing UCITS and suitable for a typical UCITS investor; and

c. any contractual arrangements with financial intermediaries or delegates are modified or terminated with effect from the date of de-notification in order to prevent any new or further, direct or indirect, offering or placement of the units identified in the notification referred to in R7-7.3.1.

R7-7.8.2 The information referred to in points (a) and (b) of R7-7.6.1 is to clearly describe the consequences for investors if they do not accept the offer to redeem or repurchase their units. Such information is to be provided in Maltese or English.

R7-7.8.3 As of the de-notification date referred to in point (c) of R7-7.6.1, the

European UCITS scheme shall cease any new or further, direct or indirect, offering or placement of its units which were the subject of de-notification in Malta.

R7-7.8.4 The European UCITS scheme shall submit a notification to the competent authorities of its home Member State containing the information referred to in R7-7.6.1.

R7-7.8.5 The European UCITS scheme shall provide Maltese investors who remain invested in the said scheme with the information required under Articles 68 to 82 and under Article 94 of the UCITS Directive. Such information shall be provided using any electronic or other distance communication means, provided that the information and communication means are available for investors in either Maltese or English.

SECTION 8 Cessation of a Collective Investment Scheme Licence

R8-8.1 Procedure

R8-8.1.1 The scheme shall inform the MFSA at an early stage of its intention to surrender its collective investment scheme licence. The MFSA may require the scheme to delay the surrender of its licence, or to wind-up such business in accordance with conditions imposed by the MFSA, in order to protect the interests of unit-holders.

R8-8.1.2 The general procedure for surrendering a collective investment scheme licence is outlined below, although the MFSA reserves the right to impose additional requirements or vary them according to the particular circumstances of the case.

R8-8.1.3 Following a notification to the MFSA of its intention to surrender its collective investment scheme licence, the scheme shall submit the following documentation to the MFSA:

(a) a formal request to the MFSA asking for its approval to surrender the collective investment scheme licence;

(b) a resolution of the governing body of the scheme:

i. confirming the scheme's intention to surrender its licence, subject to the MFSA's approval and once the necessary formalities are finalised;

ii. confirming that the scheme has informed its auditor, depositary and relevant service providers of its intention to surrender its licence;

(c) a shareholders' resolution confirming their approval of the proposed closure of the scheme (where applicable);

(d) the scheme must give due notice to its unit-holders of its intention to surrender its Licence (once the necessary formalities are finalised). A confirmation to this effect should be submitted to the MFSA.

R8-8.1.4 Subsequently the scheme shall also submit:

(a) a confirmation from the scheme's administrator that there are no investors in the scheme;

(b) a confirmation from the scheme's administrator that no complaints/ litigation are/is pending arising from any event that occurred whilst the scheme was licensed;

(c) a confirmation from the scheme's administrator that the accruals and liabilities of the scheme have been cleared;

(d) a confirmation from the depositary (where applicable) or administrator that the disbursement of the assets of the scheme has been completed in order; and

(e) the original licence/s granted to it by the MFSA.

R8-8.1.5 Once all the requirements listed above are satisfied, the respective supervisory fees are settled, the scheme is delisted from any regulated market and passporting notifications withdrawn (as applicable), an internal process will be set in motion for approval of the surrender of the collective investment scheme licence.

R8-8.1.6 The MFSA will convey its final decision to the scheme and will issue a public notice regarding the surrender of the scheme's licence.

R8-8.1.7 Where the Scheme consists of different sub-funds, and the licence which had been granted to the sub-fund is being surrendered, this section will nonetheless apply and any references to 'the scheme' shall be deemed to refer to 'the sub-fund'.

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