

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Circular to the financial services industry on changes to the Investment Services Rules

The MFSA has published a revised version of the following Investment Services Rulebooks:

- (a) the Investment Services Rules for Investment Services Providers;
- (b) the Investment Services Rules for Professional Investor Funds;
- (c) the Investment Services Rules for Alternative Investment Funds; and
- (d) the Investment Services Rules for Retail Collective Investment Schemes.

The changes are summarised below:

- ***Investment Services Rules for Investment Services Providers***

The revisions to the Investment Services Rules for Investment Services Providers consist of the following:

- I. *Introduction* – The Introduction has been revised to include reference to the following EU Directives and Regulations that were implemented within the Rulebook:
 - (a) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (“CRD IV”);
 - (b) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (“CRR”);
 - (c) Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European Venture Capital Funds and Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European Social Entrepreneurship Funds; and
 - (d) Commission Delegated Regulation (EU) No. 694/2014 of 17 December 2013 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regards to regulatory technical standards determining the types of alternative investment fund managers.
- II. *Part A* - Section 9 has been revised and it new set out the documents that need to be submitted to the Authority once a licence holder informs the MFSA of its intention to surrender its Investment Services Licence.

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

- III. *Schedule DIII* – Schedule DIII to Part A has been updated to better reflect the provisions of the AIFMD concerning cross-border services.
- IV. *Schedule EIII* - Schedule EIII to Part A has been revised in order to reproduce the ESMA template notification letter and attestation for cross-border notifications under the AIFMD.
- V. *Schedule F* - Schedule F¹ to Part A has been revised to align the Rulebook with the framework introduced by the Civil Unions Act.
- VI. *Part BI* - Part BI has been revised as follows:
- (a) SLCs 1.55 to 1.58 have been introduced in order to set out the criteria to be met for a Licence Holder to be categorised as “significant” taking into account the guiding principles outlined in the CRD IV and CRR which refer to the size, internal organisation and the nature, scope and the complexity of the investment services activities of an investment firm²;
 - (b) SLC 2.117 has been revised to include the obligation of compliance with the complaints handling procedures set out in Appendix 16;
 - (c) SLC 2.125 has been revised to remove a typo concerning the timing of unsolicited calls; and
 - (d) SLCs 7.21 and 7.53 have been revised to align the Rulebook with the framework introduced by the Civil Unions Act.
- VII. *Part BII* - Part BII has been revised as follows:
- (a) SLC 1.19 has been revised to include the obligation of compliance with the complaints handling procedures set out in Appendix 16; and
 - (b) SLC 5.18 has been revised to align the Rulebook with the framework introduced by the Civil Unions Act.
- VIII. *Part BIII* - Part BIII has been revised as follows:
- (a) A note to Licence Holders has been included both in the section applicable to *de minimis* AIFMs as well as in the section regulating AIFMs on the applicability, as appropriate, of Regulation (EU) No. 345/2013 of the European Parliament and of the Council of 17 April 2013 on European Venture Capital Funds and of

¹ Schedule F – Personal Questionnaire

² Licence Holders should refer to the Consultation Document issued by the Authority on 30 June 2014 outlining the Proposals for the Categorisation of Investment Firms as ‘significant’ [MFSA Ref.: 06-2014]

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Regulation (EU) No. 346/2013 of the European Parliament and of the Council of 17 April on European Social Entrepreneurship Funds;

- (b) SLC 1.09 has been revised to include the obligation of compliance with the complaints handling procedures set out in Appendix 16; and
- (c) SLC 6.27 has been revised to align the Rulebook with the framework introduced by the Civil Unions Act.

IX. *Part BIV* - Part BIV has been revised has follows:

- (a) SLC 1.03 dealing with the entities which may be licenced as Category 4b Licence Holders has been revised to clarify the type of entities which are eligible to be licenced as a Category 4b Investment Service Licence Holder;
- (b) SLC 1.19 was revised to update the cross-references to SLCs 1.17 and 1.18;
- (c) SLC 2.05 was revised to refer to Directive 2013/36/EU was repealed Directive 2006/48/EC;
- (d) SLC 2.22 has been revised to align the Rulebook with the framework introduced by the Civil Unions Act;
- (e) Sections 3 and 4 have been revised to provide that Section 3 will *inter alia* apply to custodians of Retail Non-UCITS Schemes which are managed by a *de minimis* AIFM and Section 4 will *inter alia* apply to custodians of Retail Non-UCITS Schemes which are managed by an AIFM; and
- (f) In the light of representations from the industry concerning the regulation and supervision of Category 4b Licence Holders, the Authority has revised SLCs 4.29 and 4.30 to reflect the provisions of the Directive. Licence Holders are requested to refer to the ‘ad hoc’ circular which has been issued by the Authority providing a detailed explanation on the changes introduced in these SLCs.

X. *Appendix 1B, Appendix 3, Appendix 4 and Appendix 10* – These Appendices have been revised to include a reference to SLCs 1.55 to 1.58 of Part BI for the purposes of determining whether a Licence Holder is to be categorised as “significant”.

XI. *Appendix 13*³ – SLC 2.02 dealing with the contents of the Annual Report has been revised to include the requirement of a Custodian’s Report.

XII. *Appendix 16* - A new Appendix has been introduced setting out complaints handling procedures for Licence Holders authorised as MiFID firms, UCITS Management

³ Appendix 13 – Transparency Requirements applicable to AIFMs

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Companies and AIFMS that have been authorised to provide investment services (in accordance with SLC 1.04 of Part BIII of these Rules.

XIII. *Glossary* - The Glossary to the Investment Services Rules for Investment Services Providers has been updated to reflect the implementation of Regulations 345/2013 and 346/2013 as well as the inclusion of the framework introduced by the Civil Unions Act.

- ***Investment Services Rules for Professional Investor Funds***

The revisions to Investment Services Rules for Professional Investor Funds consist of the following:

- I. *Part A* - Sections 4.2 and 4.3 have been revised to align the Rulebook with the framework introduced by the Civil Unions Act.
- II. *Schedule C* - The revisions carried out to Schedule C⁴ to Part A also serve the purpose of aligning the Rulebook with the framework introduced by the Civil Unions Act.
- III. *Parts BI, BII and BIII* - Parts BI, BII and BIII of the Investment Services Rules for Professional Investor Funds have been revised as follows:
 - (a) A note to Licence Holders has been included on the applicability to PIFs, as appropriate, of Regulation (EU) no 345/2013 of the European Parliament and of the Council of 17 April 2013 on European Venture Capital Funds and of Regulation (EU) no 346/2013 of the European Parliament and of the Council of 17 April on European Social Entrepreneurship Funds, in addition to the SLCs prescribed in the Rulebook;
 - (b) SLCs 1.33 of Parts BI and BII and SLC 1.32 of Part BIII have been revised to align the Rulebook with the framework introduced by the Civil Unions Act.
- IV. *Appendix I* - SLCs 6.7 and 6.26 of Appendix I to Part B of the Rules have been revised to incorporate the changes consequent to the Review by ESMA of the CESR Guidelines on a Common Definition of European Money Market Funds issued in 22 August 2014 [ESMA/2014/1103].
- V. *Appendix III*⁵ - Appendix III to Part B of the Rules has been similarly revised to align the Rulebook with the framework introduced by the Civil Unions Act.
- VI. *Glossary* – The Glossary to the Investment Services Rules for Professional Investor Funds has been updated to reflect the implementation of Regulation No. 345/2013 and Regulation No. 346/2013 as well as the inclusion of the framework introduced by the Civil Unions Act.

⁴ Schedule C – Personal Questionnaire

⁵ Appendix III – Declaration Forms

- ***Investment Services Rules for Alternative Investment Funds***

The revisions to the Investment Services Rules for Alternative Investment Funds consist of the following:

- I. *Introduction* – The Introduction has been revised to include a reference to the following EU Regulations within the list of EU legislation transposed and implemented within the Rulebook:
 - (a) Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European Venture Capital Funds and Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European Social Entrepreneurship Funds
 - (b) Commission Delegated Regulation (EU) No. 694/2014 of 17 December 2013 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regards to regulatory technical standards determining the types of alternative investment fund managers.
- II. *Part A* – Sections 4.4 and 4.5 have been revised to align the Rulebook with the framework introduced by the Civil Unions Act. Furthermore, Section 8 has also been updated to refer to the new Schedule 4.
- III. *Schedule 2* - Schedule 2⁶ to Part A have been revised to align the Rulebook with the framework introduced by the Civil Unions Act
- IV. *Schedule 4* - a new Schedule⁷ has been included to reproduce the ESMA template notification letter and attestation for cross-border notifications under the AIFMD.
- V. *Part B* – Part B has been revised as follows:
 - (a) A note to Licence Holders has been included on the applicability to AIFs, as appropriate, of Regulation (EU) no 345/2013 of the European Parliament and of the Council of 17 April 2013 on European Venture Capital Funds and of Regulation (EU) no 346/2013 of the European Parliament and of the Council of 17 April on European Social Entrepreneurship Funds, in addition to the SLCs prescribed in the Rulebook;
 - (b) SLC 3.33 has been revised to include the obligation of compliance with the complaints handling procedures set out in Appendix 10; and

⁶ Schedule 2 – Personal Questionnaire

⁷ Schedule 4 - Notification letter for the marketing of units or shares of EU AIFs in Member States other than the home Member State of the AIFM

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

- (c) SLC 3.43 has been revised to align the Rulebook with the framework introduced by the Civil Unions Act; and
 - (d) A new SLC 5.08 is being introduced (with consequential renumbering of current SLCs 5.08 to 5.10] dealing with the requirement to further supplement the annual report with a Custodian's report.
- VI. *Appendix 1* - SLCs 9.07 and 9.20 of Appendix I to Part B of the Rules have been revised to incorporate the changes consequent to the Review by ESMA of the CESR Guidelines on a Common Definition of European Money Market Funds issued in 22 August 2014 [ESMA/2014/1103].
- VII. *Appendix 9*⁸ - The revisions to Appendix 9 serve the purpose of aligning the said appendix with the framework introduced by the Civil Unions Act.
- VIII. *Appendix 10* - A new Appendix has been introduced setting out complaints handling procedures for AIFs.
- IX. *Glossary* - The Glossary to the Investment Services Rules for Alternative Investment Funds has been updated to reflect the implementation of Regulations 345/2013 and 346/2013 as well as the inclusion of the framework introduced by the Civil Unions Act.
- ***Investment Services Rules for Retail Collective Investment Schemes***

The revisions to the Investment Services Rules for Retail Collective Investment Schemes consist of the following:

- I. *Part BI and Part BII* – SLC 3.5 in Parts BI and BII has been revised to include the obligation of compliance with the complaints handling procedures set out in Appendix X.
- II. *Appendix VII* - SLCs 1.8 and 3.6 of Appendix VII Rules have been revised to incorporate the changes consequent to the Review by ESMA of the CESR Guidelines on a Common Definition of European Money Market Funds issued in 22 August 2014 [ESMA/2014/1103].
- III. *Appendix X* - A new Appendix has been introduced setting out complaints handling procedures for Malta-based Retail UCITS Collective Investment Schemes.

⁸ Appendix 9 – Declaration Forms

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Contacts:

Any queries should be addressed as follows:

- Queries on AIFMD should be addressed to Dr. Isabelle Agius, Regulatory Development Unit by e-mail on iagius@mfsa.com.mt or to Mr. Jonathan Sammut, Securities and Markets Supervision Unit on jsammut@mfsa.com.mt;
- Queries on the Custodian's Report should be addressed to Mr. Ian Meli, Securities and Markets Supervision Unit by e-mail on imeli@mfsa.com.mt;
- Queries on Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European Venture Capital Funds and Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European Social Entrepreneurship Funds shall be addressed to Dr. Isabelle Agius, Regulatory Development Unit by e-mail on iagius@mfsa.com.mt or to Dr. Petra Attard-Montalto, Regulatory Development Unit, on pattardmontalto@mfsa.com.mt;
- Queries in relation to the complaints handling procedures set out in Appendix 16 to the Investment Services Rules for Investment Services Providers and in Appendix X to the Investment Services Rules for Alternative Investment Funds shall be addressed to Dr. Petra Attard-Montalto by e-mail on pattardmontalto@mfsa.com.mt or to Ms. Lisa Cordina, Securities and Markets Supervision Unit, on lcordina@mfsa.com.mt;
- Queries in relation to the passporting notifications Schedules DIII, EIII and Schedule 4 shall be addressed to Ms. Claire Tanti, Authorisation Unit on ctanti@mfsa.com.mt;
- Queries in relation to the categorisation of Investment Firms as 'significant' and the related changes to the Investment Services Rules for Investment Services Providers shall be addressed to Ms. Mellyora Ellul, Securities and Markets Supervision Unit, on mellul@mfsa.com.mt.

Communications Unit
Malta Financial Services Authority
3rd October 2014