

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 and Guidance Notes namely:

- Investment Services Rules for Alternative Investment Funds;
- Investment Services Rules for Professional Investor Funds;
- Investment Services Rules for Investment Services Providers;
- Investment Services Rules for Retail Collective Investment Schemes;
- Investment Services Rules for Recognised Persons; and
- Guidance Notes on the Computation of the Annual Supervisory Fees for Investment Services Licence Holders.

The changes are detailed in this Circular.

➤ ***Changes to the Investment Services Rules for Alternative Investment Funds***

The Authority has revised Parts A and B of the Investment Services Rules for Alternative Investment Funds.

In particular, the changes to Part A include the following:

- [I] The introduction of 5 categories of Alternative Investment Funds (AIFs) namely:
- AIFs promoted to Retail Investors;
 - AIFs promoted to Professional Investors [as defined in Annex II of MiFID];
 - AIFs promoted to Experienced Investors;
 - AIFs promoted to Qualifying Investors; and
 - AIFs promoted to Extraordinary Investors.

This change will render the transition from PIFs to AIFs, where necessary, a smoother and more efficient one.

[II] Section 8 of Part A which deals with marketing of AIFs has been revised to provide *inter alia* that an AIF may only be sold in jurisdictions outside Malta to investors other than professional investors subject to the national provisions applicable in the respective jurisdictions as per Article 43 of Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Manager ('AIFMD'). This concept is further reiterated in Section 7 of Part B which has also been revised in this regard.

[III] Section 9 of Part A which deals with the application and annual supervisory fees relating to an AIF licence has also been amended to include the revised annual supervisory fees, following the publication of the Investment Services Act (Fees) Regulations [L.N. 9 of 2014] which came into force on 1 January 2014. Similarly, Schedule A was amended to reflect the revised fees.

[IV] The changes to Part B primarily include the updating to Chapter 4 thereof dealing with investment objectives, policies and restrictions. This Chapter was divided into sections which are applicable depending on the type of AIF licenced. Furthermore, the SLC relating to cross sub-fund investments has been revised in line with the circular recently issued by the Authority on the interpretation of limits applicable to cross sub-fund investments on 6 February 2014.

[V] Appendix 4 has been revised in order for it to be aligned with the introduction of the different categories of AIFs. In particular, a new SLC 2.02 has been introduced providing for the statement which must be included in the Offering Document when an AIF is sold to Experienced, Qualifying and Extraordinary Investors.

[VI] Appendix 8 has been revised in view of the ESMA Guidelines on reporting obligations under Articles 3(3)(d) and 24(1), (2) and (4) of the AIFMD. For the same reason, Appendices 5 and 6 have been deleted since the information required in terms of these two forms is being reported in Sections 279 and 280 of Annex 3 of Appendix 8.

[VII] A new Appendix 9 was included in the Rulebook providing for the Declaration Forms for Professional, Experienced, Qualifying and Extraordinary Investors.

➤ ***Changes to the Investment Services Rules for Professional Investor Funds***

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

[I] The revision to Section 10 of Part A which deals with the application and annual supervisory fees relating to a PIF licence to include the revised annual supervisory fees, following the publication of the Investment Services Act (Fees) Regulations [L.N. 9 of 2014] which came into force on 1 January 2014. Similarly Schedule A to Part A was amended to reflect the revised fees.

[II] The introduction of a new Standard Licence Condition in Parts BI, BII and BIII respectively binding the Scheme to monitor at all times the regulatory status of the fund manager so that in the event that the fund manager is no longer a de minimis fund manager, the Scheme shall ensure that it becomes compliant with the requirements prescribed in the AIFMD.

[III] The SLC relating to cross sub-fund investments included in Parts BII and BIII has been revised in line with the circular which recently issued by the Authority on the interpretation of limits applicable to cross sub-fund investments on 6 February 2014.

[IV] Annexes 1 and 2 have been added to Appendix I in view of the ESMA Guidelines on reporting obligations under Articles 3(3)(d) and 24(1), (2) and (4) of the AIFMD. For the same reason, Appendix V has been deleted since the information required in terms of this form is being reported in the aforementioned Annexes 1 and 2.

[V] A new Appendix 6 has been included in the Rulebook providing a list of regulatory requirements with which the PIF (Experienced, Qualifying or Extraordinary) must comply in order to be licenced as an AIFMD-compliant fund.

➤ ***Changes to the Investment Services Rules for Investment Services Providers***

The Authority has revised Parts A and B of the Investment Services Rules for Investment Services Providers, in particular to reflect the amendments brought about by CRD IV/ CRR, the revisions to the application and annual supervisory fees and some other miscellaneous changes as follows:

[I] The financial resources requirement terminology which was previously used to refer to the surplus / deficit of the minimum capital requirement of all Licence Holders was replaced by the capital resources requirement terminology for Licence Holders which are subject to the CRR provisions. Therefore, sections 3 and 4 of Part A have been amended to refer to the Capital Resources Requirement, this being the new terminology relating to the minimum capital requirement applicable to Category 2 and Category 3 Investment Services Licence Holders which qualify as MiFID Firms.

[II] Category 4 Licence Holders shall be required to have a capital requirement of €730,000. This requirement is being implemented to ensure consistency with the capital requirements applicable to investment firms that can act as custodian in terms of Article 21(3) AIFMD.

[III] Section 4 of Part A has been amended to reflect the new licence classification of Category 4b which is being introduced in view of the transposition of the AIFMD.

[IV] Sections 5.1 and Section 5.2 of Part A have been revised to refer to the new Competency Form, which has to be duly completed before a Compliance Officer / Money Laundering Reporting Officer is appointed.

[V] Section 7 of Part A which deals with the application and annual supervisory fees relating to an investment services licence has been amended to include the revised annual supervisory fees, following the publication of the Investment Services Act (Fees) Regulations

[L.N. 9 of 2014] which came into force on 1 January 2014. These changes have also been reflected in the Application Form for an Investment Services Licence and in the Application Form for an Investment Services Licence as an Alternative Investment Fund Manager.

[VI] Section 10.1 has been revised to indicate the ongoing supplementary requirements for Category 2 and Category 3 Licence Holders arising from CRD IV. Section 10.1 of Part A also refers to the introduction of a new Section 2A in Part BIV of these Rules which requires a Category 4a Licence Holder to apply the requirements prescribed in SLCs 7.29 – 7.30 and 7.42 – 7.6 of Part BI of the said Rules for the maintenance and reporting of capital resources.

[VII] Section 10.2 outlines *inter alia* the capital resources requirement of Category 1 Licence Holders, which has been amended as follows:

The Capital Resources Requirement shall be the higher of (a) and (b) below:

- a. Initial Capital; and
- b. Fixed Overheads Requirement.

The meaning of Own Funds and the Capital Resources Requirement applicable to Category 1 Licence Holders, as well as the methodology for calculating a Licence Holder's Financial Resources Requirement, are set out in Appendix 1A.

[VIII] A new Section 10.3 has been established to refer to the capital resources requirement of Category 2 and Category 3 Licence Holders (MiFID Firms). These Licence Holders shall at all times satisfy the following Capital Resources Requirement:

- a. A Common Equity Tier 1 capital ratio of 4.5%;
- b. A Tier 1 capital ratio of 6%;
- c. A total capital ratio of 8%.

The meaning of Own Funds and the risk components applicable to the different categories of licences are set out in Appendix 1B.

[IX] CRD IV has changed the meaning of the "initial capital" required by new applicants for an investment services licence. This is set out in a new Section 10.4, and is applicable to all Licence Holders. Furthermore, the reference to Category 4 Licence Holders in the table detailing the Minimum Initial Capital in Section 10.4 has been revised in accordance with the provisions of the Alternative Investment Fund Managers Directive.

[X] In Part BIII, Paragraph 3 of the Transitional Arrangements Section was revised to reflect the correct transposition of Article 61(5) AIFMD. Furthermore, there have also been

changes to Part BIII as a result of the implementation of the ESMA Guidelines on reporting obligations under Articles 3(3)(d) and 24(1), (2) and (4) of the AIFMD.

[XI] Part BIV has been revised to include a new Section 2A which requires a Category 4a Licence Holder to apply the requirements prescribed for the maintenance and reporting of capital resources. Furthermore, an amendment was included to provide for the applicability of Section 3 of the said Rules apart from Sections 1 and 2 to custodians of non-UCITS Retail Schemes.

[XII] Appendix IA to Part B of the Rules was revised to remove the reference to Category 4A in the said Appendix. Furthermore Section 1.1 was revised to include a reference to SLCs 6.01 of Part BIII and SLC 2.01 of Part BIV of these Rules. The Subordinated Loan Agreement Template was also revised.

[XIII] Appendix IB to Part B of these Rules was revised to include a reference to Category 4a Investment Services Licence Holders.

[XIV] Appendices 2A, 2B and 2C have also been revised. In particular, in Appendix 2A, the Category 4a option has been completely removed from the dropdown list. The reference to “Category 4a” has also been removed from the “Financial Resources Requirement” Sheet. The financial return in Appendix 2C was updated.

[XV] Appendix 13 together with the respective Annexes was also updated in view of the implementation of the ESMA Guidelines on reporting obligations under Articles 3(3)(d) and 24(1), (2) and (4) of the AIFMD.

➤ ***Changes to the Investment Services Rules for Retail Collective Investment Schemes***

The Authority has revised Section 11 of Part A of the Investment Services Rules for Retail Collective Investment Schemes dealing with the application and annual supervisory fees relating to a Collective Investment Scheme licence to include the revised application and annual supervisory fees, following the publication of L.N. 9 of 2014 L.N. 9 of 2014 – Investment Services Act (Fees) Regulations. L.N. 9 of 2014 which came into force on 1 January 2014.

➤ ***Changes to the Investment Services Rules for Recognised Persons***

The Authority has revised the Investment Services Rules for Recognised Persons. In particular, [i] Part A.I – Recognised Fund Administrators, Section 7; [ii] Part A.II – Recognised Private Collective Investment Schemes, Section 5; and [iii] Part A.III – Recognised Incorporated Cell Companies, Section 10, have been respectively amended to include the revised application and annual supervisory fees, following the publication of the

Investment Services Act (Fees) Regulations [L.N. 9 of 2014] which came into force on 1 January 2014.

➤ ***Guidance Notes on the Computation of the Annual Supervisory Fees for Investment Services Licence Holders***

The Guidance Notes on the Computation of the Annual Supervisory Fees for Investment Services Licence Holders, including Annex 1 to the said Guidance Notes (specifically, the Annual Supervisory Fee Calculator) have been amended in order to reflect the revised application and annual supervisory fees, following the publication of the Investment Services Act (Fees) Regulations [L.N. 9 of 2014] which came into force on 1 January 2014.

The revised Investment Services Rules and Guidance Notes are available for download from the MFSA website.

Contacts

Any queries on the revised Investment Services Rules should be addressed as follows:

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- CRD IV: Any queries should be addressed to Ms. Mellyora Grech, Securities and Markets Supervision Unit at mgrech@mfsa.com.mt or to Mr. Andrew Said, Securities and Markets Supervision Unit at asaid@mfsa.com.mt;
- Revised Fee Structure: Any queries should be addressed to Ms. Stephanie Buhagiar Camilleri, Securities and Markets Supervision Unit at scamilleri@mfsa.com.mt

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