

# MFSA

MALTA FINANCIAL SERVICES AUTHORITY

## **Publication of Revised Investment Services Rules for Investment Services Providers and Investment Services Rules for Retail Collective Investment Schemes**

The MFSA has effected some amendments to the Investment Services Rules for Investment Services Providers and to the Investment Services Rules for Retail Collective Investment Schemes (“the Rules”).

These amendments follow an earlier consultation launched by the MFSA during January 2013 to transpose and implement the ESMA ‘Guidelines for competent authorities and UCITS management companies - Guidelines on ETFs and other UCITS issues’ [ESMA/2012/832]. The consultation period closed on 12<sup>th</sup> February 2013.

The amendments to the **Investment Services Rules for Investment Services Providers** were carried out in Appendix 11 to Part B entitled “Supplementary Licence Conditions on Risk Management, Counterparty Risk Exposure and Issuer Concentration”. Revisions were made to the following sections:

Section 3 – “Calculation of Global Exposure”  
Section 7 – “Efficient Portfolio Management Techniques”  
Section 9 – “Collateral”  
Section 9 – “Counterparty Risk and Issuer Concentration”  
Section 10 – “Transactions in Financial Derivative Instruments”

Moreover, a new Section 11 – “Financial Indices” was introduced governing the use of financial indices for investments by UCITS.

The amendments to the **Investment Services Rules for Retail Collective Investment Schemes** were carried out to various sections according to the area to which they relate. Revisions were made to the following sections:

Section 3A – “Valuation of Assets/Issue of Units”  
Section 6 – “Prospectus and Key Investor Information Document”  
Section 8 – “Other Published Information including Promotional Material”  
Section 21 – “Use of Repurchase/Reverse Repurchase and Stock Borrowing/Stock Lending Agreements”

In addition, a new Section 23 – “Supplementary conditions applicable to Schemes set up as ETF Schemes” was introduced dealing with the contents of the constitutional document of UCITS ETFs and specifying the introduction of an identifier ‘UCITS ETF’ in the name.

Revisions were made to Appendix I to Part B of the Investment Services Rules for Retail Collective Investment Schemes. New Sections 5, 6, 9, 10, 11, 12 and 13 were introduced to Annex II, which regulates the information to be included in the prospectus of a Scheme which qualifies as a Maltese UCITS.

New Standard Licence Conditions 1.10, 2.17, 2.18 and 2.19 on the contents of the annual and half-yearly reports were introduced in Appendix II to Part B of the Investment Services Rules for Retail Collective Investment Schemes.

In order to ensure uniformity of treatment, the changes previously referred to that deal with Appendix 11 to Part B of the Investment Services Rules for Investment Services Providers have been replicated in Appendix VI to Part B of the Investment Services Rules for Retail Collective Investment Schemes.

The Authority would also like to draw the attention of the investment funds industry to the following transitional provisions for implementation:

1. UCITS licenced after 18<sup>th</sup> February 2013 shall be expected to comply with the revised Rules **immediately**. Any reinvestment of cash collateral after the application date shall comply with the revised Rules immediately.
2. UCITS which were already licenced prior to 18<sup>th</sup> February 2013 which invest in financial indices that do not comply with the Guidelines as transposed in the Rules are required to align their investments and their portfolio of collateral with the revised Investment Services Rules **by 18<sup>th</sup> February 2014**.
3. Structured UCITS as defined in Article 36 of Regulation 583/2010 which were already licenced prior to 18<sup>th</sup> February 2013 are **not required to comply** with the new requirements provided that they do not accept any new subscriptions after that date. However, in order to be able to continue offering the underlying payoff to existing investors, such existing UCITS can actively manage their financial contracts.
4. UCITS which were already licenced prior to 18<sup>th</sup> February 2013 should align their portfolio of collateral with the revised Rules **by 18<sup>th</sup> February 2014**. However, any reinvestment of cash collateral after 18<sup>th</sup> February 2013 should comply with the Rules **immediately**.
5. UCITS which were already licenced prior to 18<sup>th</sup> February 2013 and have entered into revenue sharing arrangements should comply with SLC 5.01(b) of Appendix I to Part B of the Investment Services Rules for Retail Collective Investment Schemes **by 18<sup>th</sup> February 2014**.
6. A UCITS ETF which was already licenced prior to 18<sup>th</sup> February 2013 is not required to comply with the new requirements relating to identifiers **until the earlier of**:
  - a) the first occasion after 18<sup>th</sup> February 2013 on which the name of the fund is changed for another reason; and
  - b) 18<sup>th</sup> February 2014.
7. A UCITS ETF which was already licenced prior to 18<sup>th</sup> February 2013 shall comply with the provisions related to the treatment of secondary market investors **immediately**.

8. Requirements relating to the contents of the fund rules or instrument of incorporation of a UCITS which is already licenced, its prospectus, its Key Investor Information Document, or any marketing communication that it has issued prior to 18<sup>th</sup> February 2013, do not come into effect **until the earlier of:**
  - a) the first occasion after 18<sup>th</sup> February 2013 on which the document or communication, having been revised or replaced for another purpose, is published; and
  - b) 18<sup>th</sup> February 2014.
9. Requirements to publish information in the report and accounts of a UCITS which is already licenced **do not apply** in respect of any accounting period that has ended prior to the 18<sup>th</sup> February 2013.

The revised Rules have been uploaded on the MFSA's website under the section dedicated to Regulation. UCITS should consider the updated Rules and take the necessary measures to implement the new requirements, where applicable, and in full respect of the transitional provisions outlined above.

Any queries with regards to the updated Rules should be addressed to Mr. Christopher P. Buttigieg, Deputy Director, Securities and Markets Supervision Unit [e-mail: [cbuttigieg@mfsa.com.mt](mailto:cbuttigieg@mfsa.com.mt)]; Dr. Isabelle Agius, Manager, Regulatory Development Unit [e-mail: [iagius@mfsa.com.mt](mailto:iagius@mfsa.com.mt)]; Mr. Jonathan Sammut, Analyst, Securities and Markets Supervision Unit [e-mail: [jsammut@mfsa.com.mt](mailto:jsammut@mfsa.com.mt)]; or Mr. Christopher Micallef, Analyst, Securities and Markets Supervision Unit [e-mail: [cmicallef@mfsa.com.mt](mailto:cmicallef@mfsa.com.mt)].

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