

## **INVESTMENT SERVICES RULES FOR RETAIL COLLECTIVE INVESTMENT SCHEMES**

### **PART B: STANDARD LICENCE CONDITIONS**

#### **Appendix II Contents of the Financial Statements**

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##### **1.0 Introduction**

- 1.1 The contents of the Annual and Half-Yearly Reports are primarily the responsibility of the Scheme concerned. Moreover, any service-providers such as Managers and/ or Custodians who include their reports within the Scheme's Reports, also have a responsibility in ensuring the accuracy and fairness of their disclosures. In the case of the Annual Report which includes the Scheme's audited financial statements, the Scheme's auditor has a responsibility insofar as the audited financial statements and the opinion expressed thereon is concerned.
- 1.2 A copy of the Annual and Half-Yearly Reports shall be supplied to unit-holders free of charge upon request.
- 1.3 A copy of the Annual and Half-Yearly Reports should also be submitted to the MFSA, together with:
- i. in the case of Annual Report, a Directors' Confirmation in line with para. 1.5 below and an Auditor's Report in line with para. 1.6 below.
  - ii. in the case of Half-Yearly Reports, a Directors' Confirmation in line with para. 1.5 below.
- 1.4 The Scheme and/or its Manager should ensure that all the necessary checks have been carried out to ensure the accuracy and completeness of the Reports prior to publication. An indication of the nature of checks which the Authority expects to be performed (which should not be interpreted as an exhaustive list), is included in Annex III hereto.
- 1.5 Copies of Annual and Half-Yearly Reports submitted to the MFSA should be accompanied by a Directors' confirmation to the effect that to the best of their knowledge, the Report is complete and accurate in all material respects and conforms with MFSA's requirements in terms of the Scheme's Licence. A specimen of the wording of such a confirmation is included on Annex I hereto.
- 1.6 In so far as the Annual Report is concerned, the Scheme will be required to request its auditors to review the Report in its entirety to ensure that it includes all disclosures

# MFSA

## MALTA FINANCIAL SERVICES AUTHORITY

required by this Appendix and that all references to figures included in the audited financial statements are accurate. The Scheme shall require the auditor to provide it with an opinion to this effect which shall be retained in the Scheme's records. A specimen of the wording of such an opinion is included in Annex II hereto.

- 1.7 The MFSA reserves the right to take whatever action it deems appropriate should it come across material misstatements and/or inaccurate or incomplete information therein. Such action may range from requests for clarifications, to the possible imposition of fines and – where necessary – the publication of amendments to the Reports. MFSA reserves the right to issue a Public Notice (at the expense of the party concerned) highlighting why amendments have been necessary.
- 1.8 Dates for the initial reports issued by a collective investment scheme should be agreed with the MFSA at the time of the granting of the licence.
- 1.9 The Annual Report should contain the following information:
- a. a Balance Sheet or a Statement of Assets and Liabilities;
  - b. a detailed Income and Expenditure Account for the financial year;
  - c. a report on the activities of the financial year;
  - d. other information outlined in Section 2 below; ~~and~~
  - e. any other significant information which will enable investors to make an informed judgement on the development of the activities of the Scheme and its results;
  - f. the total amount of remuneration for the financial year, split into fixed and variable remuneration paid by the manager and by the UCITS to its staff, and the number of beneficiaries, and, where relevant, any amount paid directly by the UCITS itself, including any performance fee;
  - g. the aggregate amount of remuneration broken down by categories of employees or other members of staff as referred to in SLC 3.57 of Part BII of the Investment Services Rules for Investment Services Providers;
  - h. a description of how the remuneration and the benefits have been calculated;
  - i. the outcome of the reviews referred to in paragraphs (c) and (d) of SLC 3.56 of Part BII of the Investment Services Rules for Investment Services Providers including any irregularities that have occurred;
  - j. material changes to the adopted remuneration policy.

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The Half-Yearly Report should contain at least the information prescribed in SLCs 2.2 to 2.7 hereunder.

- 1.10 The Annual and Half-Yearly Reports of a Scheme which is an index-tracking UCITS shall state the size of the tracking error at the end of the period under review.
- 1.11 The Annual and Half-Yearly Reports should be available to the public at locations, or through other means as approved by the MFSA, specified in the full Prospectus, and should be supplied to unit-holders free of charge upon request.

## **2.0 Information to be included in the Annual Report**

- 2.1 The Annual Report should include the following as well as any additional significant information which will enable investors to make an informed judgement on the progress of the Scheme and its results.
- 2.2 A Balance Sheet or Statement of Assets and Liabilities, including details of accounting and valuation policies, and a definition and explanation of equalisation. The statement of Assets and Liabilities should include:
  - i. Transferable Securities
  - ii. Debt Instruments
  - iii. Bank balances
  - iv. Other assets
  - v. Total assets
  - vi. Liabilities
  - vii. Net Asset Value
- 2.3 Number of units in circulation.
- 2.4 Net Asset Value per unit and mid-market price per unit, at the beginning and the end of the period.
- 2.5 Portfolio details, distinguishing between the different types of investments and categorising each investment in accordance with the most appropriate criteria in the light of the Investment Policy of the Scheme (for example, in accordance with economic, geographical or currency criteria) as a percentage of Net Assets. For each of the investments the proportion it represents of the total Net Assets of the Scheme

should be stated. Details of the composition of the portfolio should distinguish at least between:

- i. Securities admitted to official stock exchange listing;
- ii. Securities dealt in on another regulated market;
- iii. recently issued Securities;
- iv. Securities not included in the above;
- v. Debt Instruments not included in the above; and
- vi. Financial Derivative Instruments;
- vii. other investments as applicable.

*Note:* Reference in sub-paragraph (iii) to recently issued Securities includes securities the terms of issue of which include an undertaking that application will be made for admission to official stock exchange listing or to another Regulated Market.

Where applicable the Scheme shall also include the credit rating of the issuers/ issues referred to above.

- 2.6 The notional exposure relating to each position in Financial Derivative Instruments calculated on the basis of the Commitment Approach (Appendix 6 refers).
- 2.7 A statement of change in the composition of the portfolio during the period.
- 2.8 A statement of the developments concerning the assets of the Scheme during the period including the following:
  - i. income from investments;
  - ii. other income;
  - iii. management charges;
  - iv. custodian's charges;
  - v. other charges and taxes;
  - vi. net income;

# MFSA

## MALTA FINANCIAL SERVICES AUTHORITY

- vii. distributions and income reinvested;
  - viii. changes on capital account;
  - ix. appreciation or depreciation of investments;
  - x. cash movements in relation to the creation and cancellation of units;
  - xi. transaction costs, which are costs incurred by a Scheme in connection with transactions on its portfolio; and
  - xii. any other changes affecting the assets and liabilities of the scheme.
- 2.9 A comparative table covering the last three financial years and including, for each financial year, at the end of the financial year:
- i. the total Net Asset Value;
  - ii. the Net Asset Value per unit.
- During its first, second and third financial years, the Scheme should show the above information for all financial years since its inception.
- 2.10 Details, by category of transaction, of the resulting amount of commitments. (“Commitments” are those commitments resulting from the use of techniques and instruments for the purposes of efficient portfolio management, including protection against exchange, interest rate and market risks.)
- 2.11 A report by the Manager on the activities of the Scheme during the period.
- 2.12 A report by the Custodian on whether the Scheme has been managed :
- i. in accordance with the limitations imposed on the investment and borrowing powers of the Scheme by the Constitutional Documents and by the MFSA; and
  - ii. in accordance with its Constitutional Documents and its Licence Conditions.
- If the Manager or the Scheme has not complied with (i) or (ii) above, the report of the Custodian shall state why this is the case and outline the steps which the Custodian has taken to rectify the situation.
- 2.13 Names and addresses of all Scheme functionaries.
- 2.14 Details of significant changes to full Prospectus during the period.

- 2.15 A statement regarding breaches of Licence Conditions and/or regulatory sanctions. Where there have been no breaches or regulatory sanctions, it is sufficient merely to say so. However, if there have been breaches, a summary must be provided of each breach committed and/or regulatory sanction imposed.
- 2.16 The accounting information provided in the Annual Report must be audited by a qualified auditor approved by the MFSA. The auditor's report, including any qualifications thereto, shall be reproduced in full in the Annual Report.
- 2.17 The Annual Report of the Scheme shall also contain details of the following:
- a) The exposure obtained through efficient portfolio management techniques;
  - b) The identity of the counterparties to these efficient portfolio management techniques;
  - c) The type and amount of collateral received by the Scheme to reduce counterparty exposure;
  - d) The revenue arising from efficient portfolio management techniques for the entire reporting period together with the direct and indirect operational costs and fees incurred;
  - e) The underlying exposure obtained through financial derivative instruments;
  - f) The identity of the counterparties to these financial derivative transactions; and
  - g) The type and amount of collateral received by the Scheme to reduce counterparty exposure.
- 2.18 The Annual Report of a Scheme using total return swaps or other financial derivative instruments with the same characteristics should include the following:
- (a) The underlying exposure obtained through financial derivative instruments;
  - (b) The identity of the counterpart(ies) to these financial derivative instruments;
  - (c) The type and amount of collateral received by the Scheme to reduce counterparty exposure.
- 2.19 The Annual Report of a Scheme which is an index-tracking UCITS shall provide an explanation of any divergence between the anticipated and realised tracking error for the relevant period. The Annual Report shall also disclose and explain the annual tracking difference between the performance of the UCITS and the performance of

the index tracked.

2.20 The Annual Report of a Scheme entering into OTC financial derivative transactions and using efficient portfolio management techniques, should include details of the following:

- a. where collateral received from an issuer has exceeded 20% of the NAV of the Scheme, the identity of that issuer; and
- b. whether the Scheme has been fully collateralised in securities issued or guaranteed by a Member State.

**3.0 Information to be included in the Half-Yearly Report**

3.1 A Balance Sheet or Statement of Assets and Liabilities, including details of accounting and valuation policies, and a definition and explanation of equalisation. The statement of Assets and Liabilities should include:

- i. Securities
- ii. Debt Instruments
- iii. Bank balances
- iv. Other assets
- v. Total assets
- vi. Liabilities
- vii. Net Asset Value

3.2 Number of units in circulation.

3.3 Net Asset Value per unit and mid-market price per unit, at the beginning and the end of the period.

3.4 Portfolio details, distinguishing between the different types of investments and categorising each investment in accordance with the most appropriate criteria in the light of the investment policy of the scheme (for example, in accordance with economic, geographical or currency criteria) as a percentage of Net Assets. For each of the investments the proportion it represents of the total Net Assets of the Scheme should be stated. Details of the composition of the portfolio should distinguish at least between:

# MFSA

## MALTA FINANCIAL SERVICES AUTHORITY

- i. Securities admitted to official stock exchange listing;
- ii. Securities dealt in on another regulated market;
- iii. recently issued Securities;
- iv. Securities not included in the above;
- v. Debt Instruments not included in the above;
- viii. Financial Derivative Instruments;
- vi. Other investments as applicable.

*Note:* References in sub-paragraph (iii) to recently issued Securities includes Securities the terms of issue of which include an undertaking that application will be made for admission to official stock exchange listing or to another Regulated Market.

Where applicable the Scheme shall also include the credit rating of the issuers/ issues referred to above.

- 3.5 The notional exposure relating to each position in Financial Derivative Instruments calculated on the basis of the Commitment Approach (Appendix 6 refers).
- 3.6 A statement of changes in the composition of the portfolio during the period.
- 3.7 Where the Scheme holds more than 10 per cent of its assets in deposits or other accounts with credit institutions, details of the amounts and the names of the institutions should be provided. Schemes holding less than 10 per cent of their assets in deposits or other accounts with credit institutions should submit the relevant details to the MFSA with the Report.
- 3.8 A comparative table covering the last three financial years and including, for each financial year, at the end of the financial year:
  - i. the total Net Asset Value;
  - ii. the Net Asset Value per unit.

During its first, second and third financial years, the Scheme should show the above information for all financial years since its inception.

- 3.9 A report by the Manager on the activities during the period.



# MFSA

MALTA FINANCIAL SERVICES AUTHORITY

3.10 Names and address of all Scheme functionaries.

3.11 Where the Scheme has paid or proposes to pay an interim dividend, the Half-Yearly Report should give the results after tax for the half-year concerned and the amount of the dividend paid or proposed.

**Annex I**  
**Specimen Directors' Confirmation**

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(Addressed by the Directors responsible for the preparation of the Annual/Half-Yearly Report of the Scheme to the MFSA)

We the undersigned, are responsible for the preparation of the Annual/Interim Report of (name of Scheme) for the period/year ended \_\_\_\_\_ and confirm that to the best of our knowledge:

- it is complete and accurate in all material respects and conforms with the MFSA's requirements in terms of the Scheme's Licence Conditions; and
- any disclosures of the Scheme's past performance are accurate and in conformity with the MFSA's applicable requirements.

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

**Annex II**  
**Specimen Auditors' Opinion**

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(Addressed by the Auditor to the MFSA)

We the undersigned have audited the financial statements of (name of Scheme) for the period/year ended \_\_\_\_\_ in accordance with International Standards on Auditing. In our opinion the Annual Report is complete in all material respects in accordance with the MFSA's requirements, and the Scheme's Licence Conditions.

Moreover, based on our review procedures, nothing has come to our attention that causes us to believe that the information contained in the Annual Report is inconsistent with the financial statements, the books of account and the records of (name of Scheme).

\_\_\_\_\_  
Auditor  
Date

\_\_\_\_\_  
(Signature and Date)

### **Annex III**

#### **Checks to be undertaken to ensure the accuracy and completeness of the Reports prior to publication**

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1. *Incomplete/inaccurate information regarding scheme Functionaries and Directors*

Check: Up to date complete details regarding the Scheme functionaries and Directors/ General Partner(s)/ Trustee should be included in all Reports.

2. *Issues relating to the Manager's report on activities during the period*

2.1 Reference to Performance rates without a clear indication of the basis of calculation and/ or rates which are not in line with the MFSA's requirements ordinarily applicable for rates quoted in advertisements

Check: Any reference to past performance rates should be supported by a clear description of the basis of calculation. Moreover, the requirements ordinarily applicable for rates quoted in advertisements (e.g. offer to bid/ annualised rates etc.), should be complied with.

2.2 Statements and/ or expressions of opinion which do not take in to account/ reflect developments occurring between the end of the reporting period and the publication date of the report

Check: Care should be exercised to ensure that any statements or expressions of opinion are/ will remain relevant upon publication. The Manager should seek to provide as much relevant information as possible to aid investors understand both the performance of the Scheme during the relevant period, as well as the possible effect on performance of subsequent events occurring between the end of the reporting period and publication date.

2.3 Over optimistic statements and/ or expressions of opinion regarding the Scheme's future performance

Check: Care should be exercised to ensure that any statements or expressions of opinion regarding future predicted performance are as balanced and objective as possible.

3. *Incomplete/inaccurate Custodian reports included in Annual Reports*

Check: The Custodian's Report should include the matters stipulated in para.

# MFSA

MALTA FINANCIAL SERVICES AUTHORITY

2.11 above.

#### 4. *Inconsistent reference to performance rates in different sections of the Report*

Check: All past performance references throughout the Reports, eg. quoted in the Directors' and Manager's report, should be cross-checked for accuracy and consistency.

#### 5. *Inconsistencies between statistics disclosed in the Reports and those previously reported to MFSA in the Monthly Returns*

Check: Salient statistics such as:

- Total Net Assets Value;
- Net Assets Value per unit;
- Number of shares in circulation;

should ordinarily agree with those reported to the MFSA in the Scheme's Monthly Statistical Returns. Inconsistencies may either reflect errors in the Monthly Statistical Returns or in the Reports. Alternatively, there may be valid reasons for such discrepancies. The Schemes, the Manager or the Custodian should provide MFSA with a clear explanation of the reasons for any discrepancies – preferably prior to publication of the Reports. In such instances, a minimum of two weeks clear notice should be provided.

#### 6. *Risk Warnings*

Check: Although these Rules do not include a specific requirement for inclusion of risk warnings, the MFSA considers that minimum disclosure of the following 'standard' risk warnings should be included:

- Past performance is no guarantee of future performance; and
- The value of the Scheme, including the currencies in which they are denominated, may fall as well as rise.