MFSA

MALTA FINANCIAL SERVICES AUTHORITY

CONSULTATION DOCUMENT

CONSULTATION ON THE PROPOSED REGULATION OF COLLECTIVE INVESTMENT SCHEMES INVESTING IN VIRTUAL CURRENCIES

[MFSA REF: 06-2017]

23RD OCTOBER 2017

CLOSING DATE: 10TH NOVEMBER 2017

Note: The documents circulated by the MFSA for the purpose of consultation are in draft form and comprise proposals. Accordingly, these proposals are not binding and are subject to changes and revisions following representations received from Licence Holders and other involved parties. It is important that persons involved in the consultation bear these considerations in mind.

CONSULTATION ON THE PROPOSED REGULATION OF COLLECTIVE INVESTMENT SCHEMES INVESTING IN VIRTUAL CURRENCIES

1 Introduction

1.1 The Government of Malta has reported that it is developing a broad national strategy that will see the government embracing blockchain innovation. The MFSA is mandated under Article 6(1) of the Malta Financial Services Authority Act to follow such policy guidelines as may be set out by Government.

1.2 The Malta Financial Services Authority ("MFSA") has for the past months been monitoring the developments with respect to Virtual Currencies ("VCs"). In this regard, the Authority is considering the manner in which rules may be introduced to ensure investor protection and market integrity in the context of investments in VCs.

1.3 As a first step, the MFSA is establishing and is, by way of this consultation document, publishing a framework for the regulation of collective investment schemes investing in VCs.

1.4 This consultation deals with a standalone rulebook applicable to Professional Investor Funds ("PIFs") which have investment in VCs as their investment objective. Building on the existing rules applicable to PIFs, the MFSA has added further rules which specifically aim to mitigate the potential risks of investing in VCs.

1.5 The MFSA is presently considering whether Alternative Investment Funds and Notified Alternative Investment Funds, respectively, should also be allowed to invest in VCs.

1.6 In view of the risk associated with the investment model of collective investment schemes investing in virtual currencies, it has been decided that, for the time being, the legal structures for PIFs making such investments should be limited to SICAV and INVCO structures, which are required to have a board of directors responsible for the overall conduct of business of the collective investment scheme.

2. Summary of proposals

2.1 The main proposals introduced within this new rulebook, which aim at safeguarding the interest of investors and the integrity of the financial market in

the context of virtual currencies, will require the PIF and in certain instances its service providers to:

i. ***Competence*** – have sufficient knowledge and experience in the field of information technology, VCs and their underlying technologies, including but not limited to the Distributed Ledger Technology.

ii. ***Risk Warnings*** – include in its offering documentation risk warnings in relation to the Scheme's proposed direct and/or indirect investment in VCs.

iii. ***Quality Assessment*** – ensure that the appointed Investment Manager carries out appropriate research in order to assess the "quality" of the VCs being invested into.

iv. ***Risk Management*** – ensure that prior to investing in a VC/s on behalf of the Scheme, the investment manager assesses whether the risk profile of the said VC/s fall/s within the scope of the risk management policy of the Scheme.

v. ***Valuation*** – ensure that the appointed Service Providers have the business organisation, systems, experience and expertise necessary to conduct the required verification and valuation of the Scheme's investments in VCs.

2.2 The MFSA notes that the proposed framework aims to regulate the collective investment schemes investing in VCs and thus various service providers fall outside the scope of this consultation. Opinions expressed by regulators, including the European Banking Authority, discourage credit institutions, payment institutions and e-money institutions against buying, holding or selling VCs. This is essential to mitigate risks to financial stability. In this regard, credit institutions, financial institutions, [re]insurance companies, their subsidiaries or associated companies and retirement pension schemes are excluded from dealing in VCs for their clients or their own account.

3. Concluding remarks

3.1 These proposals are not binding and are subject to changes and revisions following receipt of feedback from the industry. The industry is also invited to submit, for the consideration of the MFSA, any additional changes/ improvements to the draft rules intended to enhance this rulebook.

3.2 Interested parties are to send their comments and feedback in writing at the earliest and by not later than **10th November 2017**, on the following email: vcfunds@mfsa.com.mt.

Communications Unit
Malta Financial Services Authority
MFSA Ref: 06-2017
23rd October 2017

INVESTMENT SERVICES RULES
FOR
PROFESSIONAL INVESTOR FUNDS
INVESTING IN VIRTUAL CURRENCIES

ISSUED: XX MONTH 2017
APPLICABILITY: XX MONTH 201X

MFSA
MALTA FINANCIAL SERVICES AUTHORITY

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PART A: THE APPLICATION PROCESS

Chapter 1 General

Title 1 Introduction

Section 1 *Regulation of Collective Investment Schemes in terms of the Investment Services Act*

R1-1.1.1 Collective Investment Schemes, including Professional Investor Funds ("PIFs") are regulated by the Investment Services Act[1] (hereinafter referred to as "the Act") which provides the statutory basis for regulating Collective Investment Schemes constituted in or operating in or from Malta. Qualifying PIFs are a special class of Collective Investment Schemes which fall within the provisions of the Act.

R1-1.1.2 Article 2 of 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:

i. the scheme or arrangement operates according to the principle of risk spreading; and either
ii. the contributions of the participants and the profits or income out of which payments are to be made to them are pooled; or
iii. 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
iv. units are, or have been, or will be issued continuously or in blocks at short intervals.

[1] Cap. 370 – Laws of Malta

The Act also provides that an alternative investment fund that is not promoted to retail investors and that does not have the characteristic listed in paragraph (i) shall only be deemed to be a Collective Investment Scheme if the scheme, in specific circumstances as established by regulations under this Act, is exempt from such requirement and satisfies any conditions that may be prescribed.

R1-1.1.3 Exemptions can be granted from the requirement to obtain a Collective Investment Scheme licence in terms of the Investment Services Act (Exemption) Regulations[2] and the Investment Services Act (Recognition of Private Collective Investment Schemes) Regulations[3].

[2] S.L. 370.02
[3] S.L. 370.06

Chapter 2 Professional Investor Funds

Title 1 Qualifying Investors

Section 1 Investor Base

R2-1.1.1 In terms of the MFSA's regulatory regime applicable to Collective Investment Schemes, PIFs investing in Virtual Currencies can be promoted only to Qualifying Investors as defined and outlined in these Rules. Thus, unless otherwise indicated, all references to PIFs throughout these Rules shall be understood as referring to PIFs promoted to Qualifying Investors.

R2-1.1.2 A PIF promoted to Qualifying Investors and investing directly or indirectly in Virtual Currencies may only be established as an investment company with variable share capital ("SICAV")[4] or an investment company with fixed share capital ("INVCO")[5].

R2-1.1.3 A "Qualifying Investor", is an investor that fulfils the following criteria:

i. invests a minimum of EUR 100,000 or its currency equivalent in the PIF which investment may not be reduced below this minimum amount at any time by way of a partial redemption;
ii. declares in writing to the Investment Manager and the PIF that it is aware of and accepts the risks associated with the proposed investment; and
iii. satisfies at least one of the following:

(a) is a body corporate which has net assets in excess of EUR 750,000 or which is part of a group which has net assets in excess of EUR 750,000 or, in each case, the currency equivalent thereof;
(b) is an unincorporated body of persons or association which has net assets in excess of EUR 750,000 or the currency equivalent;
(c) is a trust where the net value of the trust's assets is in excess of EUR 750,000 or the currency equivalent;

4 Companies Act (Investment Companies with Variable Share Capital) Regulations
5 Companies Act (Investment Companies with Fixed Share Capital) Regulations

(d) is an individual whose net worth or joint net worth with that of the person's spouse, exceeds EUR 750,000 or the currency equivalent; or

(e) is a senior employee or director of a Service Provider to the PIF.

R2-1.1.4 In the case of 'joint holders', all holders should individually satisfy the definition of 'Qualifying Investor'.

R2-1.1.5 In relation to investments made by an entity holding on a nominee basis, the underlying investors considered to be the beneficial owners must individually satisfy the definition of 'Qualifying Investors'.

R2-1.1.6 The minimum investment requirement is EUR 100,000 or the currency equivalent. The total amount invested may not fall below this threshold unless this is the result of a fall in the Net Asset Value ("NAV"). Provided that the minimum threshold is satisfied, additional investments – of any size – may be made. The minimum investment requirement applies to each individual Qualifying Investor. In the case of joint holders, the minimum investment requirement is EUR 100,000 or the currency equivalent.

R2-1.1.7 In the case of an umbrella fund comprising of sub-funds each of which is set up as a PIF, the EUR 100,000 requirement or the currency equivalent is applicable on a per scheme basis rather than on a per sub-fund basis

Title 2 Service Providers

Section 1 General

R2-2.1.1 A PIF may appoint any Service Provider as it may deem necessary. Ordinarily, these Service Providers may include, amongst others, an Investment Manager, an Administrator and a Custodian.

R2-2.1.2 The Service Providers of a PIF shall be established and regulated in a 'Recognised Jurisdiction'. Recognised Jurisdictions include the EU/EEA countries as well as signatories to a Multilateral MoU or Bilateral MoU with the MFSA covering the relevant sector of financial services.

R2-2.1.3 Where one or more of the proposed Service Providers is/are not established and/or regulated in a Recognised Jurisdiction, it is recommended that, prior to the submission of an application for a PIF licence, the promoters submit an application for preliminary indication of acceptability of a PIF as outlined in the following sections.

Section 2 Investment Manager

R2-2.2.1 A PIF may be either a self-managed PIF or appoint a third-party Investment Manager.

R2-2.2.2 The Investment Manager of a PIF may be one of the following:

i. a *de minimis* AIFM in possession of a Category 2 Investment Services Licence issued in terms of Article 6 of the Act and should be duly licensed and authorised by the MFSA to provide management services to Collective Investment Schemes;
ii. a *de minimis* AIFM registered in a Member State in accordance with Article 3(1) of the AIFMD; or
iii. a manager licensed in a Recognised Jurisdiction.

R2-2.2.3 Where the proposed Investment Manager has appointed a sub-manager with limited or full discretion in respect of the management of the assets of the PIF, the sub-manager is not subject to the MFSA's approval and no eligibility criteria apply. In such case, the MFSA expects the Investment Manager to exercise care and diligence in the selection of the sub-manager and to assume responsibility for the acts of the sub-manager.

Section 3 ***Administrator***

R2-2.3.1 Where the Scheme is externally managed, the administration function may be carried out by the Investment Manager of the Scheme, unless the Scheme outsources such function to an independent Administrator.

R2-2.3.2 Where the Scheme appoints the Investment Manager and the Investment Manager opts to undertake the administration function, it shall ensure that the Investment Manager is also authorised to carry out such function. The Scheme shall seek approval for this appointment from the MFSA and the Authority shall review the competence of the Investment Manager to undertake the administration function. The Authority shall also assess the operational set-up in relation to the functional and hierarchical separation of the investment management and administration function.

R2-2.3.3 The Administrator can either be in possession of a Recognised Fund Administration Certificate issued in terms of Article 9A of the Act, or established in an EU/EEA country or Recognised Jurisdiction and in possession of the necessary authorisation to carry out the administration function.

R2-2.3.4 A self-managed Scheme shall have an appointed independent Administrator in place at all times.

Section 4 ***Custodian***

R2-2.4.1 A PIF is not required to appoint a Custodian in terms of the Investment Services Act (Custodians of Collective Investment Schemes) Regulations[6]. Nonetheless a PIF is required to make the necessary arrangements for the appointment of an entity entrusted with safekeeping the PIF's assets.

R2-2.4.2 Where the PIF does not appoint a Custodian, responsibility for the establishment of proper arrangements for the safekeeping of the PIF's assets remains with the governing body and the other officers of the PIF. The applicant will be required to outline as part of the application process the arrangements that will be put in place to ensure adequate safekeeping of the assets of the PIF.

[6] S.L. 370.32

R2-2.4.3 Where the PIF wishes to appoint a Custodian established in Malta, the Custodian can be in possession of a Category 4a or Category 4b Investment Services Licence. In this case, the Custodian shall ensure compliance with the applicable provisions of the Investment Services Act (Custodians of Collective Investment Schemes) Regulations.

Chapter 3 Collective Investment Scheme Licence

Title 1 General

Section 1 Criteria which the MFSA will apply in considering a licence application

R3-1.1.1 The MFSA may only grant a Collective Investment Scheme licence to a Qualifying Investor PIF if it is satisfied that the Scheme will comply in all respects with the provisions of the Act, the applicable regulations and the rules included in these Investment Services Rules. Furthermore, the MFSA must also be satisfied that the directors and other officers, are 'fit and proper' persons to carry out the functions required of them in connection with the PIF.

R3-1.1.2 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:

i. the protection of investors and the general public;
ii. the protection to the reputation of Malta taking into account Malta's international commitments;
iii. the promotion of competition and choice; and
iv. the reputation and suitability of the applicant and all other parties connected with the Scheme.

R3-1.1.3 In assessing an application for a Collective Investment Scheme as a Qualifying Investor PIF, 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 PIF. Such persons should be of good standing and should be competent. The MFSA requires a number of parties involved in the Scheme to have sufficient knowledge and experience in the field of information technology, Virtual Currencies and their underlying technologies, including but not limited to the Distributed Ledger Technology. The MFSA reserves the right to refuse a licence if it does not approve a party involved with the PIF.

R3-1.1.4 Although the Act provides for the licensing of many different categories of Schemes, the MFSA applies the same standards relating to the 'fit and proper' status of the applicant and its Service Providers.

R3-1.1.5 The 'fit and proper' test is one which an applicant and a licence holder must satisfy on a continuing basis. The MFSA assesses each case on its own merits and on the basis of the relevant circumstances.

R3-1.1.6 Nonetheless, the onus of proving that it meets the required standards on an ongoing basis rests on the applicant and/or licensed PIF as the case may be. It is not the MFSA's task to prove that an applicant is fit and proper either upon licencing or thereafter.

R3-1.1.7 In carrying out the 'fit and proper' test, the MFSA adopts a cumulative approach. It may decide that a PIF 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 is truthful and as complete as possible.

R3-1.1.8 When arriving at its decision as to whether an applicant has met the required standards, the MFSA will take account both of what is disclosed 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.

R3-1.1.9 In general terms, the applicant must meet three criteria to satisfy the 'fit and proper' test namely: (i) **integrity**; (ii) **competence**; and (iii) **solvency**.

R3-1.1.10 Integrity requires that the PIF, its officers and its Service Providers act honestly and in a trustworthy fashion.

R3-1.1.11 Competence means that the persons responsible for running the PIF must be able to demonstrate an acceptable amount of knowledge, professional expertise and experience. With reference to PIFs investing in Virtual Currencies, the MFSA expects such persons to be competent within the field of Virtual Currencies. 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.

R3-1.1.12 Solvency involves ensuring that proper financial controls and management of liquidity and capital is applied.

Title 2 Applications for a Collective Investment Scheme Licence

Section 1 Preliminary indication of acceptability

R3-2.1.1 An application for preliminary indication of acceptability of a PIF is to be submitted in respect of a prospective PIF having one or more of its Service Providers which does not fall within the parameters outlined in Rule R2-2.1.2 above.

R3-2.1.2 If any of the Service Providers to be appointed by the PIF operate from a country that is not a Recognised Jurisdiction or are not subsidiaries of a company involved in financial services and regulated in a Recognised Jurisdiction, it is recommended that at an early stage, applicants request a preliminary indication of acceptability of the PIF. Schedule B to this Part contains the application form for preliminary indication of acceptability of a PIF.

R3-2.1.3 The MFSA will review the proposed structure of the PIF and its prospective Service Providers and will inform the applicant whether the proposed structure of the PIF and its Service Providers are acceptable to the MFSA.

R3-2.1.4 The MFSA will ordinarily communicate the acceptability or otherwise of the proposed structure of the PIF within seven business days of receipt of the application for preliminary indication of acceptability of a PIF provided all relevant details pertaining to the regulatory status of the relevant Service Provider(s) and the applicable regulatory framework in the jurisdiction concerned are received.

R3-2.1.5 The application for preliminary indication of acceptability of a PIF does not replace the application for a PIF licence. Therefore, where the MFSA has issued a positive indication of acceptability of the PIF, the applicant would then need to apply for a Collective Investment Scheme licence. A positive indication of acceptability of a PIF should not be construed as a commitment or guarantee that the MFSA will grant a licence to the PIF once the applicant submits an application for a PIF licence.

Section 2 ***The application process***

R3-2.2.1 When submitting an application for a Collective Investment Scheme licence under the Act, the applicant shall ensure that the appropriate application form[7] is completed and submitted together with all the supporting documentation.

R3-2.2.2 The application requirements which must be satisfied by a PIF promoted to Qualifying Investors are summarised below.

R3-2.2.3 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.

R3-2.2.4 **Phase One** consists of the following steps:

i. The MFSA recommends that the applicant/promoter(s) 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 applicant who shall be responsible for the submission of all the relevant information 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. The supporting documentation is listed in Schedule A. Nonetheless, the MFSA reserves the right to request such additional information as it may require when processing an application for a licence.

ii. The MFSA may ask for more information and may make such further enquiries as it considers necessary. Applicants are to note that the MFSA will send all correspondence regarding the application directly to the applicant.

iii. The MFSA carries out the necessary due diligence checks at this stage.

iv. The MFSA will consider the nature of the proposed Scheme and will apply the rules included in Part B of this Rulebook which

[7] Schedule A to Part A of these Rules

represent the ongoing requirements to which the Scheme will be subject, if and when licensed.

R3-2.2.5 **Phase Two** consists of the following steps:

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

ii. 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.

iii. The MFSA will proceed with the issue of a licence as soon as all pre-licensing issues are resolved.

R3-2.2.6 During **Phase Three**, the applicant may be required to satisfy a number of post-licensing matters prior to formal commencement of business.

Section 3 Applications for the licensing of additional sub-funds of an existing PIF

R3-2.3.1 A licensed PIF constituted in the form of an umbrella fund 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;
ii. a confirmation from the governing body of the Scheme signifying its intention to apply for a licence in favour of the sub-fund;
iii. a final draft of the revised Offering Memorandum/ Offering Supplement;
iv. the appropriate application fee as outlined in; and
v. a draft copy of the approval by the governing body of the Scheme of the revised Offering Memorandum/ Offering Supplement (as applicable).

Section 4 ***Applications for the approval of additional classes of shares/units of an existing PIF***

R3-2.4.1 A licensed PIF constituted in the form of an umbrella (i.e. with sub-funds) or multiclass (i.e. without sub-funds) fund wishing to issue an additional class of shares/ units is ordinarily required to submit the documents listed hereunder. The additional class of shares/ units shall not constitute a distinct sub-fund of the PIF.

R3-2.4.2 The documents required are the following:

i. formal notification to the MFSA of its intention to issue additional classes of shares/ units;
ii. a final draft of the revised Offering Document/s;
iii. a draft copy of the approval of the governing body of the PIF of the Offering Document/s; and
iv. a confirmation from the governing body of the PIF signifying its intention to issue additional classes of shares/ units.

R3-2.4.3 The issue of additional classes of shares/ units within an existing PIF – so long as the additional classes of shares/ units do not constitute a distinct sub-fund of the PIF – is not subject to any application/ supervisory fees.

Section 5 ***Listing on a regulated market***

R3-2.5.1 A PIF that has been granted or has applied for a Collective Investment Scheme licence in terms of the Act may apply for admissibility to listing with the Listing Authority. The MFSA is the Listing Authority in terms of the Financial Market Act.

R3-2.5.2 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 a Collective Investment Scheme licence need not be resubmitted as part of the application for admissibility to listing.

R3-2.5.3 In addition, provided the MFSA is informed of the PIF's intention to apply for admissibility to listing – once these 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.

Title 3 Contents of the Offering Document/s

Section 1 General

R3-3.1.1 Unless otherwise agreed with the MFSA, a Scheme shall issue or cause to be issued an Offering Document/s for which the Scheme shall be responsible. The purpose of the Offering Document/s is/are to provide sufficient information to enable potential Qualifying Investors to make an informed investment decision.

R3-3.1.2 The Offering Document/s shall contain all material information which at the date of the Offering Document/s is within the knowledge of the governing body of the Scheme to be relevant for the purpose of making an informed judgement about the merits of participating in the Scheme and the extent of the risks accepted by so participating. The Offering Document/s shall include the information outlined in the following sections.

Section 2 Information concerning the Scheme

R3-3.2.1 The Offering Document/s shall include the following statements –which shall be in a prominent position printed in font whose pitch is at least 12:

- *"[name of the Scheme] is licensed by the Malta Financial Services Authority ("MFSA") as a Professional Investor Fund which is available to Qualifying Investors.*
- *Professional Investor Funds are non-retail Schemes. Therefore, the protection normally arising as a result of the imposition of the MFSA's investment and borrowing restrictions and other requirements for retail Schemes do not apply.*
- *Investors in PIFs are not protected by any statutory compensation arrangements in the event of the Scheme's failure.*
- *The MFSA has made no assessment or value judgment on the soundness of the Scheme or for the accuracy or completeness of statements made or opinions expressed with regard to it."*

R3-3.2.2 The Offering Document/s shall include the following statements:

i. a statement that the governing body of the Scheme confirming their approval of the content of the Offering Document/s;

ii. a statement indicating that:

(a) changes to the investment policies and restrictions of the Scheme, or in the case of an umbrella fund, its sub-funds, shall be notified to investors in advance of the change;

(b) changes to the investment objectives of the Scheme, or in the case of an umbrella fund its sub-funds, shall be notified to investors in advance of the change. The change in the investment objectives will only become effective after all redemption requests received during such notice period, have been satisfied.

iii. a statement – where the Scheme has issued 'Voting Shares' to the promoters and 'non-Voting Shares' to prospective investors – identifying the holders of the Voting Shares of the Scheme. In the event that the Voting Shares are held by a corporate entity or a trustee, the Offering Document/s may include the name of the said corporate entity/ trustee without disclosing the names of the individual beneficial owners/ beneficiaries. The Offering Document/s would also need to state that the identity of the ultimate beneficial owners of the holders of Voting Shares will be disclosed upon request.

R3-3.2.3 The following information shall be provided in the Offering Document/s:

i. name of the Scheme;

ii. date of establishment of the Scheme and a statement as to its duration, if limited;

iii. name or style, legal form and registered office;

iv. in the case of an umbrella fund, an indication of the sub-funds;

v. the investment objectives, policies and restrictions of the Scheme, together with the extent of use of leverage. In the case of an umbrella fund, this information must be provided for each sub-fund;

vi. accounting and distribution dates;

vii. name of Auditor;

viii. details of the types and main characteristics of the units and in particular:

(a) the nature of the right represented by the unit;
(b) indication of the voting rights, if any of the unitholders.

ix. procedures and conditions for the creation, issue and sale of units;

x. procedures and conditions for the repurchase, redemption and cancellation of units, and details of the circumstances in which repurchase or redemption may be suspended;

xi. rules for the valuation of assets;

xii. the method to be used for the determination of the creation, sale and issue prices and the repurchase, redemption and cancellation prices of units, in particular:

(a) the method and frequency of the calculation of the NAV;
(b) information concerning the charges relating to the sale or issue and the repurchase or redemption of units; and
(c) arrangements whereby unitholders and prospective unitholders may deal.

xiii. in the case of an umbrella fund, the charges applicable to the switching of investments from one sub-fund to another;

xiv. information concerning the nature, amount and the basis of calculation in respect of remuneration payable by the Scheme to the Investment Manager and the Investment Committee, Administrator, Custodian (where applicable), third parties, and in respect of the reimbursement of costs by the Scheme to the Investment Manager, to the Custodian (where applicable) and to third parties;

xv. the amounts of authorised and paid-up share capital;

xvi. brief details of the members of the board of directors of the Scheme. Where the Scheme has appointed one or more corporate directors, this section should include brief details on the corporate director and its directors, including a brief description of the nature/ objects of the company. In the case of a corporate director with nominee shareholders and directors, this section should

either disclose the ultimate beneficial owners of the corporate director or include a statement that such information will be available upon request;

xvii. in the case of a Scheme set up as an investment company with variable share capital and opting to issue shares subject to full payment by a settlement date, in accordance with regulation 16 of the Companies Act (Investment Companies with Variable Share Capital) Regulations, the Scheme shall indicate in its Offering Document/s, the settlement date by which payment of the full subscription price is to be received, which date cannot be later than five working days from the date of issue of those shares; and

xviii. where the Scheme is established as an investment company with variable share capital and opting to issue shares for a consideration other than cash, in accordance with regulation 10 of the Companies Act (Investment Companies with Variable Share Capital) Regulations, the Scheme shall indicate in its Offering Document, the procedure to be followed by a prospective investor contemplating an application in specie.

Section 3 ***Information concerning the Investment Manager, Administrator, Custodian/ Prime Broker (where applicable) ("the Service Providers")***

R3-3.3.1 The following information shall be provided in the Offering Document/s:

i. name or style, registered office and head office;

ii. if the Service Provider is part of a group, the name of that group;

iii. the regulatory status of the Service Provider;

iv. in the case of the Administrator, a statement whether the Administrator is appointed by the Scheme or the Investment Manager;

v. where one or more Service Providers have not been appointed, a description should be provided concerning how the functions normally undertaken by each Service Provider will be carried out: e.g. if a Custodian/Prime Broker is not appointed, the Offering Document/s should include a description of the safekeeping arrangements that will be put in place with respect to the assets of the Scheme;

vi. details of the members of the Investment Committee, including an overview of their experience and expertise together with an outline of the person(s) responsible for the day to day management of the assets of the Scheme.

Section 4 ***Risk warnings***

R3-3.4.1 This section should provide a detailed and clear indication of the principal risks associated with investing in the Scheme and specifically the risks associated with Virtual Currencies.

R3-3.4.2 Where it is possible for the Scheme to enter into agreements with investors for the purpose of committing funds for the subscription at a future date to units at a specific price, a risk warning should be made to the effect that should the Scheme issue units at a discount with respect to its current NAV, in terms of the such agreements, there will be a risk of dilution to the NAV of the Scheme.

R3-3.4.3 There should also be a clear risk warning that while investors entering into an agreement with the Scheme for the purpose of committing funds for the subscription at a future date to units at a specific price, would in effect be subscribing for such units at a discount if the NAV per unit prevailing at the time the drawdown request is made exceeds the price at which the investor had agreed to subscribe for units in terms of such agreement, on the other hand, if the NAV per unit at the time a drawdown request is made is lower than the price at which the investor had agreed to subscribe for units in terms of such agreement, the investor would, in effect, be paying a premium for such units.

Section 5 ***General Information***

R3-3.5.1 The Offering Document/s shall provide the following information:

i. a description of the potential conflicts of interest which could arise between the Investment Manager, the Investment Committee or the Custodian/Prime Broker and the Scheme;

ii. the name of any entity which has been contracted by the Investment Manager or the Scheme to carry out its work;

iii. information concerning the arrangements for making payments to unitholders, purchasing or redeeming units and making available information concerning the Scheme.

R3-3.5.2 Where the Scheme proposes to invest through joint ventures, the Offering Document/s shall provide:

i. a description of proposed investments via co-investments or joint ventures;

ii. a description of the manner in which the Scheme intends to safeguard the interest of unitholders in the instances where it may not have majority control;

iii. a description of the manner in which the Scheme will ensure the suitability of investments undertaken by such joint ventures and how it will ensure on an ongoing basis that these reflect the investment objectives and policies of the Scheme

Section 6 Use of Trading Companies and Special Purpose Vehicles

R3-3.6.1 Where applicable, the Offering Document/s shall contain an indication that the Scheme will use Trading Companies or Special Purpose Vehicles as part of its investment strategy. In particular, in relation to the use of Special Purpose Vehicles, the Offering Document/s shall include a description outlining the relevant criteria and requirements applicable in relation to the financing of such Special Purpose Vehicles. The Offering Document/s shall specify the manner in which such financing will be made i.e. either by capital contributions only, or a combination of capital contributions and loan facilities (as applicable). The Offering Document/s could also include details relating to the main terms of a loan facility arrangement to be entered into by the Scheme and the Special Purpose Vehicle in question which could inter alia include the following:

i. that the Scheme should not be obliged to honour any request for lending made by the Special Purpose Vehicle in the case where the Scheme does not have sufficient liquid assets or if the Scheme deems necessary the retention of such assets to finance other investments of the sub-fund or the retention of such assets as reserves for any current or future contingent liability;

ii. that any amount borrowed by the Special Purpose Vehicle will be repayable on or within a short period of time following any

request in this regard by the Scheme in order to ensure the liquidity of the Scheme and allow the Scheme to satisfy redemption requests by investors in the case where these cannot be satisfied from liquid assets available to the Scheme;

iii. that any proceeds of any loan made to the Special Purpose Vehicle shall be used by it solely to finance the acquisition of the assets or property referred to in the loan agreement, which shall always reflect and be in line with the objectives and policies of the sub-fund;

iv. any other safeguards deemed appropriate by the directors of the Scheme.

Section 7 ***Use of Side Pockets***

R3-3.7.1 Where applicable in the case of use of side pockets, the Offering Document/s shall provide:

i. the circumstances/criteria where a side pocket may be employed, the policy for transferring assets to side pockets, including the nature of the assets that may be allocated to side pockets and the circumstances in which such allocations may be made as well as the procedure for the allocation of investments to side pockets; a disclosure of any side pocket arrangements together with the clause in the instruments of incorporation which permits the creation of side pockets;

ii. the policy and procedure to be followed by the Scheme for transferring assets out of side pockets or for redeeming such assets as well as the procedure to be followed for the redemption or re-conversion of the units representing the side pocket. In this regard, upon the occurrence of a 'liquidity event' whereby an asset allocated to a side pocket becomes liquid or capable of valuation, the Scheme may decide to redeem such asset or to transfer such asset to the liquid pool of assets –details pertaining to the policy and procedure to be adopted are to be clearly disclosed;

iii. limits (where applicable) on the size of side pockets, including the maximum percentage of the Scheme/sub-fund which can be allocated to the side pocket in aggregate, and in the case where no limits are set, disclosure to this effect;

iv. policies for the valuation of assets allocated to a side pocket. This disclosure should be comprehensive on the methodology for the valuation of these types of assets and should also refer to a consistent approach to be adopted when valuing such assets;

v. fee structure relating to the class of units representing the side pocket; and

vi. relevant risk warnings in particular arising from the fact that side pocket assets may be hard to value, the illiquidity of side pocket assets, the difficulty which investors may find to exit from an investment in a side pocket rather than from a 'normal' share class in the Scheme, and associated restrictions in realising interests in such assets.

Title 4 Fees

Section 1 Fee structure

R3-4.1.1 The application fee is payable on submission of the application for a PIF licence and is not refundable.

R3-4.1.2 Licenced Collective Investment Schemes are required to pay the first annual supervisory fee on the date the licence is granted and thereafter annually upon the anniversary of the granting of the licence.

R3-4.1.3 The applicable fees payable in terms of the Investment Services Act (Fees) Regulations[8] are indicated hereunder. The fees are subject to alternation by regulations.

PIFs licenced pursuant to Article 4 of the Investment Services Act		
	Application Fee	**Annual Supervisory Fee**
Scheme	€2,000	€2,000
Per sub-fund[1]	€1,000	€600
Notes: (1) Fee is applicable per sub-fund up to 15 sub-funds. No annual supervisory fee will be payable from the 16th scheme sub-fund upwards.		

[8] S.L. 370.03

INVESTMENT SERVICES RULES FOR PROFESSIONAL INVESTOR FUNDS INVESTING IN VIRTUAL CURRENCIES

PART B: RULES FOR PROFESSIONAL INVESTOR FUNDS INVESTING IN VIRTUAL CURRENCIES

Chapter 1 General

Title 1 Introduction

Section 1 Scope

R1-1.1.1 Part B of the Rules for Professional Investor Funds investing in Virtual Currencies applies to Professional Investor Funds targeting Qualifying Investors investing directly or indirectly in Virtual Currencies.

Section 2 Definitions

R1-1.2.1

i. *"Virtual Currency"* - A digital representation of value that is neither issued by a central bank or a public authority, nor necessarily attached to a fiat currency, but is accepted by natural or legal persons as a means of payment and can be transferred, stored or traded electronically[9].

ii. *"Inventor/s"* - A person, or a group of people, who created or originated the concept of a particular Virtual Currency and its underlying code and protocol.

iii. *"Exchange"* - A person or entity engaged in the exchange of Virtual Currencies for fiat currency, funds or other Virtual Currencies. Exchanges may generally accept a wide spectrum of payments. The larger Exchanges provide an overall picture of the

[9] EBA Opinion on 'virtual currencies' (EBA/Op/2014/08), published on 4 July 2014

changes vis-à-vis a Virtual Currency's exchange price and volatility.

iv. *"Issuers"* - A person, or a group of people who put Virtual Currencies into circulation.

Title 2 General Obligations

Section 1 General Requirements

R1-2.1.1 Where the Scheme is self-managed, it shall also be subject to the additional Rules applicable thereto as prescribed in Chapter 4 of these Rules.

Provided that in the case of umbrella funds, reference to "the Scheme" shall be construed, where applicable, as reference to the respective sub-fund/s of the Scheme.

R1-2.1.2 The Scheme shall commence its activities within 12 months from the date of issue of the Collective Investment Scheme licence. If for any reason, the Scheme is not in a position to comply with this condition, it shall notify the MFSA in writing setting out the reason(s) for such a delay indicating the proposed date of commencement of business. On the basis of the information provided and the circumstances of the case, the MFSA may decide to suspend or cancel the licence in accordance with the relevant provisions of the Act.

R1-2.1.3 The Scheme shall cooperate in an open and honest manner with the MFSA and inform it promptly of any relevant information. It shall cooperate fully with any inspection or other enquiry carried out by or on behalf of the MFSA and provide any relevant information in a prompt manner. The Scheme shall provide the MFSA with such information and returns as the MFSA may require to monitor compliance with the conditions referred to in the Act and any rules and regulations issued thereunder.

R1-2.1.4 The Scheme shall pay promptly all amounts due to the MFSA. In particular, the supervisory fee shall be payable by the Scheme on the day the licence is first issued, and thereafter annually within one week from the anniversary of that date.

R1-2.1.5 Where a Rule demands that the Scheme notifies the MFSA of an event, such notification shall be made to the MFSA formally, in a durable medium. The request to notify the MFSA of an event shall not be satisfied merely by the fact that the information which ought to be notified to the MFSA is included in a standard regulatory return.

R1-2.1.6 The Scheme shall notify the MFSA in writing of:

i. a change in the Scheme's name or business name (if different) at least one month in advance of the change being made;

ii. a change of address: at least one month in advance;

iii. any material changes to the conditions for initial authorisation, in particular material changes to the information provided during the application process –at least one month in advance of the change being made;

iv. the departure of a director or senior manager, Portfolio Manager, Compliance Officer, Money Laundering Reporting Officer and/or Risk Manager within 14 days of the departure.

In particular, the notification submitted by the Scheme shall include the following information:

(a) the name and role of the official departing;
(b) the reason of departure i.e. resignation, dismissal, re-organisation etc.;
(c) the effective date of resignation; and
(d) the proposed replacement.

The Scheme shall also request the director or senior manager, Portfolio Manager, Compliance Officer, Money Laundering Reporting Officer and/or Risk Manager to confirm in writing to the MFSA:

i. whether the departure has any regulatory implications, or if otherwise, to provide any relevant details;
ii. the information required in terms of paragraphs (a) to (c) above.

A copy of the Scheme's request to the departing official shall be provided to the MFSA together with the Scheme's notification of departure.

An e-mail notification of resignation shall be sent to the MFSA on ausecurities@mfsa.com.mt. This e-mail shall be followed up by the submission of original and hard copies to the MFSA.

The Scheme shall ensure that the relevant forms related to the departure and approval of officials, where applicable, are filed with the Registry of Companies.

v. any proposed material change to its business –at least one month before the change is to take effect and where a new Collective Investment Scheme licence is required, the new business shall not begin until the new Collective Investment Scheme licence has been granted or the amendment has been approved;

vi. a decision to make a material claim on any insurance policy held in relation to the Scheme's business. The notification should be provided as soon as the decision is taken;

vii. any actual or intended legal proceedings of a material nature by or against the Scheme immediately after the decision has been taken or on becoming aware of the matter;

viii. the fact, where applicable, that it has not carried out any investment activity for the preceding six months, setting out the reasons for such inactivity and providing a business plan for future activity;

ix. any instances of incorrect pricing:

Provided that the notification to the MFSA of a valuation error/incorrect pricing shall *inter alia* include:

(a) the manner in which the valuation occurred;
(b) the date of identification and the full details of the dealing day effected;
(c) details of the financial impact of the valuation error and/or the wrong prices/valuation in the case where subscriptions/redemptions were dealt with;
(d) details of any remedial measures which result from the valuation errors for the Scheme and/or its investors; and
(e) the communications to be made to the investors particularly if remedial measures are adopted.

x. any other material information concerning the Scheme, its business or its officials in Malta or abroad – immediately upon becoming aware of the matter.

R1-2.1.7 The Scheme shall obtain the written consent of the MFSA before:

i. taking any steps to cease its operations;

ii. agreeing to sell or merge the whole or any part of the undertaking;

iii. the appointment of a director or senior manager, Compliance Officer, Money Laundering Reporting Officer, Investment Committee Member, Risk Manager and/or Portfolio Manager in advance. The request for consent shall be accompanied by a Personal Questionnaire ("PQ") in the form set out in Schedule B to Part A of these Rules – duly completed by the person proposed. Provided that in the case of the Compliance Officer, the Money Laundering Reporting Officer, the Risk Manager and/or the Portfolio Manager such request shall also be accompanied by a Competency Form in the form set out in Schedule D to Part A of these Rules.

Where the person proposed had within the previous five years submitted a PQ to the MFSA, the request for consent need not be accompanied by a new PQ. In such instances, it shall be accompanied by a confirmation by the proposed person as to whether the information included in the PQ previously submitted is still current, and indicating any changes or updates thereto. This confirmation is to be countersigned by an authorised official of the Licence Holder, confirming that he/she has seen the said PQ.

iv. the change in the responsibilities of a director or senior manager in advance. The request for consent of the change in responsibilities of a director or senior manager shall be accompanied by a PQ unless the individual concerned had within the previous five years submitted a PQ to the MFSA in connection with another role occupied by such individual with the same Scheme, in which case it shall be accompanied by a confirmation by the director or senior manager as to whether the information included in the PQ previously submitted is still current, and indicating any changes or updates thereto:

Provided that a change in the responsibilities of a director or senior manager shall only be notified to the MFSA when such a change is material, which shall include a change in the status or seniority of the person concerned upwards or downwards.

R1-2.1.8 The Scheme shall ensure compliance with the Rules included in this Rulebook and the conditions laid down in its Offering Document/s. Any breaches of the Offering Document/s shall be construed as a breach of this Rule.

R1-2.1.9 Without prejudice to Rule R1-2.1.8 above, the Scheme, or the Investment Manager on behalf of the Scheme, may submit to the MFSA a request for a derogation from any specific Rule included in the Rulebook.

R1-2.1.10 A request submitted in terms of Rule R1-2.1.9 shall include the following:

i. an indication of the specific Rule and the content thereof;
ii. reasons why a derogation from this Rule is being requested;
iii. a description of the risks to the Scheme and the investor if the MFSA approves the derogation and the manner in which these risks can be mitigated;
iv. the expected duration of the derogation; and
v. a resolution of the governing body of the Scheme supporting the request for a derogation.

R1-2.1.11 The MFSA will assess open-ended requests for derogations on a case-by-case basis.

R1-2.1.12 The Scheme will be expected to assess on a continuous basis and certainly prior to expiration whether the derogation is still required.

R1-2.1.13 In the case where prior to expiration, the Scheme deems that the derogation is still appropriate and required, the Scheme shall submit to the MFSA an updated assessment prior to the expiration of such derogation.

R1-2.1.14 The Scheme, or the Investment Manager or Administrator on behalf of the Scheme shall notify the MFSA of any breach of the Licence Conditions or of any of the provisions of the Offering Document/s or Constitutional Document of the Scheme as soon as the Scheme or its Investment Manager or Administrator becomes aware of the breach

R1-2.1.15 Any notification to the MFSA of a breach shall as a minimum include the following information:

i. an indication of the Rule or the investment restriction breached (in the case advertent breaches) and the contents thereof;

ii. the date/period when the breach occurred and when/by whom it was discovered;
iii. the nature of the breach and the manner in which it occurred;
iv. the impact of the breach on the Scheme and the underlying investors. In the case where the Scheme or the investors suffered a loss, this loss shall be quantified; and
v. the action taken to prevent the recurrence of the breach.

R1-2.1.16 The Scheme shall disclose its identity as regulated entity as well as the identity of its regulator/s in all correspondence, advertisements, and other documents. Wording similar to the following shall be used: "Licensed by the MFSA as a Professional Investor Fund available to Qualifying Investors".

R1-2.1.17 The MFSA shall not be liable for any damages whatsoever resulting from any act or omission unless such act or omission is proved to have been done or omitted to be done due to wilful misconduct or gross negligence.

R1-2.1.18 The MFSA has a right from time to time, and following advance notification to the Scheme, to vary any Licence Condition or impose new conditions

R1-2.1.19 The Scheme shall not be required to make the issue and/or redemption prices of its units public. However, these must be made available to unitholders upon request.

R1-2.1.20 If dealings in the units and/or the issue of NAV are suspended, the Scheme, the Investment Manager or the Administrator on behalf of the Scheme shall inform the MFSA forthwith stating the reason for this suspension.

R1-2.1.21 The notification to the MFSA informing of the suspension of dealings and/or NAV publication and the determination of the NAV of the Scheme shall *inter alia* include:

i. the reason for the suspension of dealings and determination of the NAV;
ii. a confirmation from the Administrator that the underlying investors of the Scheme have been informed of the suspension;
iii. a resolution from the governing body of the Scheme confirming the approval of the suspension;
iv. a confirmation from the Scheme, the Investment Manager or the Administrator on behalf of the Scheme that any provision relating

to the suspension of dealings and determination of the NAV in the Offering Document/s and Constitutional Document of the Scheme have been fully complied with; and

v. the envisaged timeframe by when the suspension of dealings and NAV is expected to be lifted.

Provided that when the suspension of dealings is for two or three days as a result of closures of the main markets where the Scheme invests or closures of the main exchanges where the assets of the Scheme are traded, the documents requested in paragraphs (ii) and (iii) above need not be submitted.

R1-2.1.22 The Scheme, the Investment Manager or the Administrator on behalf of the Scheme shall keep such accounting and other records as are necessary to enable it to comply with these conditions and to demonstrate that compliance has been achieved. Accounting records shall be retained for a minimum period of ten years. During the first two years, they shall be kept at a place from which they can be produced within two working days of their being requested. After the first two years, they shall be kept at a place from which they can be produced within five working days of their being requested.

R1-2.1.23 In the event of a winding up, the Scheme must give the MFSA at least two weeks' notice of this intention. The prior approval of the MFSA shall be obtained for such decision to be adopted. If requested to do so by the MFSA, the Scheme and its Investment Manager shall do all in their power to delay the winding up or to proceed with the winding up in accordance with the conditions imposed by the MFSA.

R1-2.1.24 Any changes to the financial year-end of the Scheme shall be notified to the MFSA and disclosed in the Offering Document/s.

R1-2.1.25 The Scheme shall at all times monitor the regulatory status of the Investment Manager. In the event that the Investment Manager does no longer qualify as *de minimis*, the Scheme shall ensure that it becomes compliant with the requirements prescribed in the AIFMD.

Chapter 2 Organisational Requirements

Title 1 Governance

Section 1 Governing Body

R2-1.1.1 The governing body of the Scheme shall be responsible for ensuring that the Scheme complies with its obligations under these Rules and the Scheme's Offering Document/s.

R2-1.1.2 The governing body of the Scheme shall at all times have one or more member/s independent from the Investment Manager and the Custodian/Prime Broker. Furthermore, the governing body shall be composed of at least three members one of whom must be resident in Malta:

Provided that the governing body of the Scheme could be required to have more than three members depending on the complexity and size of the Scheme and the aggregate skill set desired.

R2-1.1.3 The MFSA shall be satisfied on a continuing basis of the fitness and properness of the members of the governing body.

R2-1.1.4 The members of the governing body shall exercise reasonable care, skill and diligence.

R2-1.1.5 The members of the governing body have, both collectively as a board and individually, an obligation to acquire and maintain sufficient knowledge and understanding of the Scheme's business to enable them to discharge their functions as directors.

R2-1.1.6 Pursuant to Rule R2-1.1.5 the governing body shall, at all times, have at least one member who has sufficient knowledge and experience in the field of information technology, Virtual Currencies and their underlying technologies, including but not limited to the Distributed Ledger Technology.

R2-1.1.7 The governing body must not merely carry out a vetting function with regards to all the documents which are submitted for its attention. It is the duty of the governing body of the Scheme to inform itself of its

investment activities and have a proper understanding of its financial condition.

R2-1.1.8 The members of the governing body of the Scheme shall exercise the powers they have for the purposes for which such powers were conferred and they shall not misuse such powers.

R2-1.1.9 The governing body shall exercise its powers independently without subordinating such powers to the will of others.

R2-1.1.10 Whilst the governing body of the Scheme may be entitled pursuant to its Constitutional Document to delegate particular functions, the delegation of such functions shall not absolve the governing body from the duty to supervise the discharge of such delegated functions.

R2-1.1.11 Pursuant to Rule R2-1.1.10**,** the governing body shall continuously monitor the execution of the functions delegated to the Service Providers and shall be satisfied that they are performing their functions in accordance with their contractual obligations.

R2-1.1.12 The members of the governing body shall carry out all the necessary checks to satisfy themselves that the Scheme's overall structure is consistent with the standards prescribed in the Act and in these Rules and that the terms agreed to in the contracts with the Service Providers are reasonable and consistent with the standards adopted by the industry. Furthermore, the governing body must ensure that all the Service Providers appointed in relation to the Scheme create an overall structure which will ensure an adequate division of responsibilities in relation to the Scheme. The governing body of the Scheme shall monitor its Service Providers on an ongoing basis, including through the conduct of onsite inspections at the offices of such providers, and shall ensure that these are discharging their contractual obligations in a diligent manner.

R2-1.1.13 The Scheme shall act honestly, fairly and with integrity – in the best interests of its investors/shareholders and of the market. Such action shall include:

i. avoiding conflicts of interest where this is possible and, where it is not, ensuring by way of disclosure, internal conflicts of interest management procedures or otherwise, that investors are treated fairly. The following procedures should be followed during board meetings, where a member considers that s(he) has or may have a conflict of interest:

(a) that person should declare that interest to the other members either at the meeting at which the issue in relation to which s(he) has an interest first arises, or if the member was not at the date of the meeting interested in the issue, at the next meeting held after s(he) became so interested;
(b) unless otherwise agreed to by the other members, a member shall avoid entering into discussions in respect of any contract or arrangement in which s(he) is interested and should withdraw from the meeting while the matter in which s(he) has an interest is being discussed;
(c) the interested member should not vote at a meeting in respect of any contract or arrangement in which s(he) is interested, and if s(he) shall do so, his/her vote shall not be counted in the quorum present at the meeting;
(d) the minutes of the meeting should accurately record the sequence of such events.

ii. abiding by all relevant laws and regulations, including in respect of Prevention of Money Laundering and Funding of Terrorism;

iii. avoiding any claim of independence or impartiality which is untrue or misleading; and

iv. avoiding making misleading or deceptive representations to investors

R2-1.1.14 The Scheme shall be liable towards the unitholders for any damages incurred by them, including the failure to perform in whole or in part its obligations.

R2-1.1.15 The Scheme shall obtain the written consent of the MFSA prior to the appointment or replacement of a director. The Scheme shall not appoint a corporate director unless such corporate director is regulated in a Recognised Jurisdiction.

R2-1.1.16 The members of the governing body shall hold regular board meetings and shall ensure that detailed minutes are taken to record accurately the matters discussed and considered. The agenda should be well structured and prepared, giving sufficient time to allow for the input of all the notice parties and Service Providers before the meeting.

R2-1.1.17 Minutes of the meetings of the governing body must be held in Malta at the Scheme's registered office or at any other place as may be agreed with the MFSA.

R2-1.1.18 The governing body shall also be guided by the provisions of the Corporate Governance Manual for Directors of Investment Companies and Collective Investment Schemes which has been issued by the MFSA.

Title 2 Service Providers

Section 1 General Principles

R2-2.1.1 The Scheme shall ensure that the appointed Service Providers have sufficient knowledge and experience in the field of information technology, Virtual Currencies and their underlying technologies, including but not limited to the Distributed Ledger Technology.

R2-2.1.2 The MFSA shall be satisfied on a continuing basis on the fitness and properness of any Service Provider appointed by the Scheme.

R2-2.1.3 The Scheme, together with the Service Providers appointed shall comply with the applicable laws, to which they may respectively be subject.

Section 2 Investment Manager

R2-2.2.1 The Scheme may appoint a third-party Investment Manager approved by the MFSA with responsibility for the portfolio management and the risk management of the Scheme.

R2-2.2.2 Where the Scheme does not appoint a third-party Investment Manager, it shall be subject to the additional rules applicable to self-managed Schemes set out in Chapter 4 to these Rules.

Provided that where the Scheme has been established and licenced as a self-managed Scheme, any reference to the "Investment Manager" shall be construed, where applicable, as reference to the "Investment Committee and/or Portfolio Manager".

R2-2.2.3 The Investment Manager shall have sufficient financial resources and liquidity at its disposal to enable it to conduct its business, and such business organisation, systems, experience and expertise deemed necessary by the MFSA for it to act as Investment Manager to a PIF investing directly or indirectly in Virtual Currencies.

R2-2.2.4 Where the Investment Manager qualifies as *de minimis* AIFM in possession of a licence granted in terms of the Investment Services Act, it shall ensure compliance with the Rules prescribed in Part BIII of the Investment Services Rules for Investment Services Providers applicable to *de minimis* AIFMs.

R2-2.2.5 Pursuant to Rule R2-2.2.3 the Scheme shall ensure that the appointed Investment Manager establishes an in-house Investment Committee made up of at least three members, whose composition may include members of the Scheme's board of directors.

The in-house Investment Committee shall, at all times, have at least one individual who has sufficient knowledge and experience in the field of information technology, Virtual Currencies and their underlying technologies, including but not limited to the Distributed Ledger Technology.

R2-2.2.6 The Scheme shall be required to satisfy the MFSA that the proposed Investment Manager and Investment Committee meets the above requirements.

R2-2.2.7 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of any party to act in the capacity of Investment Manager or Investment Committee member to the Scheme. The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information as it may consider appropriate.

Section 3 Administrator

R2-2.3.1 The Scheme may appoint an Administrator. Where an Administrator is not appointed, the Investment Manager shall be responsible for the administration function.

R2-2.3.2 The Administrator shall have the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to act as an Administrator to a PIF investing directly or indirectly in Virtual Currencies. The Scheme shall satisfy the MFSA that the proposed Administrator meets the above requirements.

R2-2.3.3 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of any party to act in the capacity of Administrator to the Scheme. The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information as it may consider appropriate.

Section 4 ***Custodian***

R2-2.4.1 The assets of the Scheme shall be subject to adequate safekeeping arrangements. The Scheme may entrust its assets to a Custodian or Prime Broker for safekeeping. In the absence of an appointed Custodian, the Scheme will be responsible for the establishment of proper arrangements for the safekeeping of its assets. Such arrangements shall be described in the Offering Document/s and shall be subject to the MFSA's prior approval.

R2-2.4.2 The Custodian or Prime Broker shall have the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to act as a Custodian or a Primer Broker to a PIF investing directly or indirectly in Virtual Currencies.

R2-2.4.3 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement any party to act in the capacity of Custodian or Prime Broker to the Scheme. The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information as it may consider appropriate.

R2-2.4.4 Where appointed, the Custodian or Prime Broker shall be separate and independent from the Investment Manager and shall act independently and solely in the interests of the unitholders. Any facts, relationships, arrangements, or circumstances which may at any stage bring that independence into question shall be declared to the MFSA as soon as the Scheme becomes aware of any such matter.

R2-2.4.5 Where appointed, the Custodian shall ensure compliance with the provisions of the Investment Services Act (Custodians of Collective Investment Schemes) Regulations.

Section 5 ***Compliance Officer***

R2-2.5.1 Responsibility for the Scheme's compliance with its Licence Conditions rests with the board of directors of the Scheme.

R2-2.5.2 In order to enable the compliance functions to be properly carried out, the Scheme shall establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the Scheme to comply with its obligations under the Act, the regulations issued thereunder and

these Rules as well as with other obligations including *inter alia* those under the Prevention of Money Laundering Act, the Prevention of Financial Markets Abuse Act and the regulations issued thereunder, as well as to detect the associated risks, and shall put in place adequate measures and procedures designed to minimize such risk and to enable the MFSA to exercise its powers effectively.

R2-2.5.3 In order to enable the compliance function to discharge its responsibilities properly, the Scheme shall ensure that a Compliance Officer is appointed to assume responsibility for the compliance function and for any reporting as to compliance required by these Rules.

R2-2.5.4 The Compliance Officer shall have the experience and expertise deemed necessary by the MFSA for it to act as Compliance Officer of a PIF investing directly or indirectly in Virtual Currencies.

R2-2.5.5 The Scheme shall request its Compliance Officer to prepare a "Compliance Report" at least on a six monthly basis, which shall be presented to the governing body of the Scheme.

R2-2.5.6 Pursuant to Rule R2-2.5.5, the "Compliance Report" should indicate any:

i. breaches of the Investment and Borrowing Restrictions;
ii. breaches to the Rules outlined in this Rulebook;
iii. complaints from unitholders in the Scheme and the manner in which these have been handled;
iv. material valuation errors (higher than 0.5% of NAV) and the manner in which these have been handled; and
v. material compliance issues during the period covered by the Compliance Report.

The "Compliance Report" should also include a confirmation that all the local Prevention of Money Laundering and Funding of Terrorism requirements have been satisfied. This confirmation should be obtained from the Scheme's Money Laundering Reporting Officer.

R2-2.5.7 A copy of the "Compliance Report" should be held in Malta at the registered office of the Scheme and made available to the MFSA during Compliance Visits.

Section 6 ***Money Laundering Reporting Officer***

R2-2.6.1 Responsibility for the Scheme's compliance with its Prevention of Money Laundering and Funding of Terrorism obligations rests with the board of directors of the Scheme.

R2-2.6.2 The Scheme shall at all times have a Money Laundering Reporting Officer ("MLRO").

R2-2.6.3 The MLRO shall have the experience and expertise deemed necessary by the MFSA for it to act as MLRO of a PIF investing directly or indirectly in Virtual Currencies.

Section 7 ***Auditor***

R2-2.7.1 The Scheme shall appoint an Auditor approved by the MFSA. The Auditor shall be a person empowered to audit accounts in terms of Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits and consolidated accounts. The Scheme shall replace its Auditor if requested to do so by the MFSA. The MFSA's consent shall be sought prior to the appointment or replacement of an Auditor.

R2-2.7.2 The Auditor shall have the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to act as an Auditor to a PIF investing directly or indirectly in Virtual Currencies.

R2-2.7.3 The Scheme shall make available to its Auditor, the information and explanations he/she needs to discharge his/her responsibilities as an Auditor and in order to meet the MFSA's requirements.

R2-2.7.4 The Scheme shall not appoint an individual as an Auditor, nor appoint an audit firm where the individual directly responsible for the audit, or his/her firm is:

i. a director, partner, qualifying shareholder, officer, representative or employee of the Scheme;
ii. a partner of, or in the employment of, any person mentioned under (i) above;

iii. a spouse, civil partner, parent, step-parent, child, step-child or other close relative of any person mentioned under (i) above;
iv. a person who is not otherwise independent of the Scheme; or
v. a person disqualified by the MFSA from acting as Auditor of a Scheme.

For this purpose an Auditor shall not be regarded as an officer or an employee of the Scheme solely by reason of being Auditor of that Scheme.

R2-2.7.5 The Scheme shall obtain from its Auditor a signed letter of engagement defining clearly the extent of the Auditor's responsibilities and the terms of his/her appointment. The Scheme shall confirm in writing to its Auditor its agreement to the terms in the letter of engagement.

R2-2.7.6 The letter of engagement shall include terms requiring the Auditor:

i. to provide such information or verification to the MFSA as the MFSA may request;

ii. to afford another Auditor all such assistance as he/she may require;

iii. to vacate his/her office if he/she becomes disqualified to act as Auditor for any reason;

iv. if he/she resigns, or is removed or not reappointed, to advise the MFSA of that fact and of the reasons for his/her ceasing to hold office. The Auditor shall also be required to advise the MFSA if there are matters he/she considers should be brought to the attention of the MFSA;

v. in accordance with Article 18 of the Act, to report immediately to the MFSA any fact or decision of which he/she becomes aware in his/her capacity as Auditor of the Scheme which:

(a) is likely to lead to a serious disqualification or refusal of his/her audit report on the accounts of the Scheme; or
(b) constitutes or is likely to constitute a material breach of the legal and regulatory requirements applicable to the Scheme under the Act; and/or
(c) relates to any other matter which has been prescribed.

R2-2.7.7 If at any time the Scheme fails to have an Auditor in office for a period exceeding four weeks, the MFSA shall be entitled to appoint a person to fill the vacancy; provided that the fees and charges so incurred shall be payable by the Scheme.

R2-2.7.8 In respect of each annual accounting period, the Scheme shall require its Auditor to prepare a management letter in accordance with the International Standards on Auditing. This management letter shall be sent to the MFSA.

Title 3 Investment Objectives, Policies and Restrictions

Section 1 General

R2-3.1.1 The Scheme shall be subject to the investment objectives, policies and restrictions outlined in its Offering Document/s. The Scheme shall ensure that the Investment Manager takes all reasonable steps to comply with the investment policies and restrictions of the Scheme either within six months from the launch thereof or upon its reaching a value equivalent to EUR 2,500,000, whichever occurs first.

R2-3.1.2 Where the Scheme intends effecting its investments through the use of Trading Companies or Special Purpose Vehicles, it shall also be subject to the supplementary Rules regarding the use of such vehicles set out in Section 6 of this Title.

R2-3.1.3 Changes to the investment objectives, policies and restrictions of the Scheme shall be notified to investors in advance of the change. The notice period should be sufficiently long to allow for redemption requests to be submitted by investors and processed prior to the change being effected. The change in the investment objectives should only become effective after all pending redemptions linked to the change in the investment objectives have been satisfied. Any applicable redemption fees would also need to be waived accordingly.

R2-3.1.4 The following shall be the rules applicable in the event of an inadvertent breach of investment restrictions:

i. if one or more of the Scheme's investment restrictions are at any time contravened for reasons beyond the control of the Investment Manager or the Scheme, the Investment Manager or the Scheme must take such steps as are necessary to ensure a restoration of compliance with such restriction(s) as soon as is reasonably practicable having regard to the interests of the unitholders and, in any event, within a period of six months beginning on the date of discovery of the contravention of such restriction(s).

   The above is aimed at addressing circumstances which may arise following acquisition of the Scheme's assets and include market price movements of the Scheme's underlying assets or market illiquidity. The above is without prejudice to the duty of the

Investment Manager and the Scheme to comply with the Scheme's investment restrictions and to ensure that such restrictions are not contravened as a direct result of any acquisition of its underlying assets.

ii. a contravention of an investment restriction which may arise due to the circumstances outlined in (i) above shall not be considered as a breach of a Licence Condition and will therefore not be subject to the MFSA's notification requirements. However, where the contravention is not remedied by the Investment Manager or the Scheme within the maximum six-month period stipulated in (i) above, a breach of this Licence Condition is deemed to arise and the relevant notification requirements will apply.

Section 2 Quality Assessment of Virtual Currencies

R2-3.2.1 The Scheme shall ensure that the appointed Investment Manager carries out appropriate research in order to assess the 'quality' of the Virtual Currencies being invested into. The Scheme shall ensure that the appointed Investment Manager keeps a record of the quality assessment and makes it available to the governing body of the Scheme.

R2-3.2.2 Pursuant to Rule R2-3.2.1, in assessing the quality of the Virtual Currency to be invested in, the Investment Manager shall take into account inter alia the following factors:

i. the inventor/s and/or issuer/s, as applicable;
ii. the protocols and the underlying infrastructure;
iii. the availability and reliability of information and the providers thereof;
iv. the service providers involved; and
v. the exchange/s on which the Virtual Currency is traded.

Section 3 Risk Management

R2-3.3.1 The Scheme shall ensure that the appointed Investment Manager:

i. Implements an appropriate, documented and regularly updated quality assessment process when investing on behalf of the

Scheme, according to the investment strategy, the objectives and risk profile of the Scheme;

ii. Ensures that the risks associated with each investment position of the Scheme and their overall effect on the Scheme's portfolio can be properly identified, measured, managed and monitored on an ongoing basis, including through the use of appropriate stress testing procedures; and

iii. Ensure that the risk profile of the Scheme shall correspond to the size, portfolio structure and investment strategies and objectives of the Scheme as provided for in its Constitutional Document and Offering Document/s

R2-3.3.2 Pursuant to Rule R2-3.3.1, the Investment Manager, within the parameters of its risk management function, shall, prior to investing in a Virtual Currency/-ies on behalf of the Scheme, assess whether the risk profile of the said Virtual Currency/-ies falls within the scope of the risk management policy of the Scheme.

R2-3.3.3 The Risk Manager, where applicable, shall also assess whether the quality assessment carried out in terms of Rule R2-3.2.2 provides reasonable assurance that the Virtual Currency/-ies being invested in on behalf of the Scheme fall/s within scope of the risk management policy of the Scheme.

R2-3.3.4 The Scheme shall ensure that the Investment Manager complies with the general principle of risk spreading.

Section 4 Liquidity Management

R2-3.4.1 The Scheme shall ensure that the appointed Investment Manager employs an appropriate liquidity management system and adopt procedures which enable the Investment Manager to monitor the liquidity risk of the Scheme and to ensure that the liquidity profile of the investments of the Scheme complies with its underlying obligations.

R2-3.4.2 The Scheme shall ensure that the appointed Investment Manager regularly conducts stress tests, under normal and exceptional liquidity conditions, which enable it to assess the liquidity risk of the Scheme and monitor the liquidity risk of the Scheme accordingly.

R2-3.4.3 The Scheme shall ensure that the appointed Investment Manager, with reference to each Scheme managed, confirms that the liquidity profile and the redemption policy are consistent.

Section 5 Verification and Valuation

R2-3.5.1 The Scheme shall ensure that the appointed Service Providers have the business organisation, systems, experience and expertise necessary to conduct the required verification and valuation of the Scheme's investments in Virtual Currencies.

R2-3.5.2 Pursuant to Rule R2-3.5.1, the Scheme shall ensure that the appointed Service Providers mitigate conflicts of interest and prevent undue influence upon employees.

Section 6 Use of Trading Companies/ Special Purpose Vehicles ("SPVs") for investment purposes

R2-3.6.1 Where the Scheme intends effecting its investments through the use of Trading Companies or Special Purpose Vehicles, it shall also be subject to the supplementary conditions regarding the use of such vehicles set out in this Section.

R2-3.6.2 The SPVs must be established in Malta or in a jurisdiction which is not a Financial Action Task Force blacklisted jurisdiction.

R2-3.6.3 The Scheme shall ensure that the investments effected through any SPV are in accordance with the investment objectives, policies and restrictions of the Scheme.

R2-3.6.4 The Scheme shall through its directors at all times maintain majority directorship of any SPV.

R2-3.6.5 The SPV shall be owned or controlled via a majority shareholding of the Voting Shares either directly or indirectly by the Scheme.

Section 7 Cross Sub-Fund Investments

R2-3.7.1 A sub-fund may invest in units of one or more sub-funds within the same Scheme, subject to this being permitted in the Constitutional Document and the Offering Document/s of the said Scheme and subject to the following:

i. the investment company should in its Constitutional Document elect to have the assets and liabilities of each sub-fund comprised in that company treated as a patrimony separate from the assets and liabilities of each other sub-fund of such company in terms of Regulation 9 of the Companies Act (Investment Companies with Variable Share Capital) Regulations;

ii. the sub-fund is allowed to invest up to 50% of its assets into any sub-fund within the same Scheme;

iii. the target sub-fund/s may not itself/themselves invest in the sub-fund which is to invest in the target sub-fund/s;

iv. in order to avoid duplication of fees, where the Investment Manager of the sub-Fund and the Investment Manager of the target sub-fund is the same or (in the case of different Investment Managers) where one Investment Manager is an affiliate of the other, only one set of management (excl. performance fees), subscription and/or redemption fees applies between the sub-fund and the target sub-fund, provided that this restriction shall apply only in respect of and to the extent (up to the portion) of the investment of the sub-fund in the target sub-fund;

v. for the purposes of ensuring compliance with any applicable capital requirements, cross-investments will be counted once;

vi. any voting rights acquired by the sub-fund from the acquisition of the units in the target sub-fund shall be disapplied as appropriate.

Section 8 Distribution of Income

R2-3.8.1 The Scheme shall effect any distributions of income in accordance with the provisions of its Constitutional Document and/or Offering Document/s.

Chapter 3 Cessation of Collective Investment Scheme Business

Title 1 Surrender of licence

Section 1 Overview

R3-1.1.1 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 unitholders.

R3-1.1.2 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.

R3-1.1.3 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:

i. a formal request to the MFSA asking for its approval to surrender the Collective Investment Scheme licence;

ii. a resolution from the governing body of the Scheme:

(a) confirming the Scheme's intention to surrender its licence, subject to the MFSA's approval and once the necessary formalities are finalised; confirming that the Scheme has informed its Auditor, Custodian and relevant Service Providers of its intention to surrender its licence;
(b) a shareholders' resolution confirming their approval of the proposed closure of the Scheme;
(c) the Scheme must give due notice to its unitholders of its intention to surrender its licence (once the necessary formalities are finalised). A confirmation to this effect should be submitted to the MFSA.

R3-1.1.4 Subsequently the Scheme shall also submit:

i. a confirmation from the Scheme's Administrator that there are no investors in the Scheme;
ii. a confirmation from the Scheme's Administrator that no complaints/ litigation are/is pending arising from any event which arose whilst there were investors in the Scheme;
iii. a confirmation from the Scheme's Administrator that the accruals and liabilities of the Scheme have been cleared;
iv. a confirmation from the Custodian (where applicable) or Administrator that the disbursement of the assets of the Scheme has been completed in order; and
v. the original licence/s granted to it by the MFSA.

R3-1.1.5 Once all the requirements listed above have been satisfied, the respective supervisory fees are settled, the Scheme is delisted from any regulated market and passporting notifications have been withdrawn (as applicable), an internal process will be set in motion for approval of the surrender of the Collective Investment Scheme licence.

R3-1.1.6 The MFSA will convey its final decision to the Scheme and will issue a public notice regarding the surrender of the Scheme's licence.

R3-1.1.7 Where the Scheme consists of different sub-funds, and the licence which had been granted in relation to the sub-fund is to be surrendered, this section will nonetheless apply and any references to 'the Scheme' shall be deemed to refer to 'the sub-fund'.

Chapter 4 Additional Rules For Professional Investor Funds Investing in Virtual Currencies established as Self-Managed Schemes

Title 1 General

Section 1 *Scope*

R4-1.1.1 Chapter 4 applies to Professional Investor Funds Investing in Virtual Currencies established as self-managed Schemes.

R4-1.1.2 Professional Investor Funds Investing in Virtual Currencies which are established as self-managed Schemes shall be required to comply with the additional rules outlined in this Chapter in addition to the rules applicable to such Schemes.

Section 2 *General Obligations*

R4-1.2.1 A self-managed Scheme (hereinafter referred to as *de minimis* self-managed Scheme) which satisfies one of the following conditions shall further comply with the requirements contained herein:

i. either directly or indirectly, through a company with which the Scheme is linked by common management or control, or by a substantive direct or indirect holding, manage portfolios of AIFs whose assets under management, including any assets acquired through use of leverage, in total do not exceed a threshold of EUR 100 million; or

ii. either directly or indirectly, through a company with which the Scheme is linked by common management or control, or by a substantive direct or indirect holding, manage portfolios of AIFs whose assets under management in total do not exceed a threshold of EUR 500 million when the portfolios of AIFs consist of AIFs that are unleveraged and have no redemption rights exercisable during a period of 5 years following the date of initial investment in each AIF.

R4-1.2.2 Where the conditions prescribed above are no longer met, the *de minimis* self-managed Scheme shall inform the MFSA thereof and shall apply for an extension to its *de minimis* PIF licence to a full AIF licence within 30 days from the date of notification thereof to the MFSA:

Provided that in complying with the requirements prescribed in Rule R4-1.2.1 (i) and (ii) above, the *de minimis* self-managed Scheme shall further comply with Articles 3 and 4 of the Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositories, leverage, transparency and supervision.

R4-1.2.3 The *de minimis* self-managed Scheme shall comply with the following requirements:

i. the Scheme shall provide information to the MFSA on its investment strategy;

ii. the Scheme shall regularly provide the MFSA with information on the main instruments in which it is trading and on its principal exposures and most important concentrations in order to enable the MFSA to monitor systemic risk effectively:

Provided that in complying with the requirements prescribed in paragraph (ii) above, the Scheme shall submit to the MFSA the information prescribed in Annexes 1 and 2 to Appendix II and shall further comply with:

(a) the applicable provisions of the Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision; and

(b) the ESMA Guidelines on reporting obligations under Articles 3(3)(d) and 24(1), (2) and (4) of the AIFMD [ESMA/2013/1339 (revised)].

iii. the Scheme shall provide the MFSA with any additional information required from time to time. In particular, in respect of each annual accounting period, the Scheme shall require its Auditor to prepare a management letter in accordance with

International Standards on Auditing, which shall be submitted to the MFSA. The Auditor must also confirm to the MFSA that the audit has been conducted in accordance with International Standards on Auditing and whether, in the Auditor's opinion the methodology used by the Scheme to calculate its assets under management complies with the requirements of the AIFMD.

R4-1.2.4 The *de minimis* self-managed Scheme shall not benefit from any rights to passport in terms of the AIFMD.

Title 2 Operational Requirements

Section 1 Capital Requirements

R4-2.1.1 The Scheme shall be operated in or from Malta, as agreed with the MFSA. It shall have sufficient financial resources at its disposal to enable it to conduct its business effectively, to meet its liabilities and to be prepared to cope with the risks to which it is exposed. The initial, paid up share capital for the Scheme should not be less than EUR 125,000 or its currency equivalent and the NAV of the Scheme is expected to exceed this amount on an ongoing basis. The Scheme shall notify the MFSA as soon as its NAV falls below EUR125,000 or its currency equivalent.

Section 2 Operational Arrangements

R4-2.2.1 The Scheme shall organise and control its affairs in a responsible manner and shall have adequate operational, administrative and financial procedures and controls to ensure compliance with all regulatory requirements and shall provide the MFSA with all the information it may require from time to time.

R4-2.2.2 The management of the assets of the Scheme shall be entrusted to the board of directors, at least one member of whom must be resident in Malta.

R4-2.2.3 The board of directors of the Scheme shall establish an in-house Investment Committee made up of at least three members, whose composition may include members of the board of directors. The proceedings of the Investment Committee shall be regulated by its Terms of Reference. Any changes thereto shall be subject to the prior approval of the MFSA.

R4-2.2.4 Provided that the Investment Committee shall, at all times, have at least one individual who has sufficient knowledge and experience in the field of information technology, Virtual Currencies and their underlying technologies, including but not limited to the Distributed Ledger Technology.

R4-2.2.5 The majority of the Investment Committee meetings – the required frequency of which should depend on the nature of the Scheme's

investment policy, but which should be at least quarterly – are to be physically held in Malta:

Provided that meetings of the Investment Committee are deemed to be physically held in Malta if the minimum number of members that form a quorum necessary for a meeting are physically present in Malta.

R4-2.2.6 The minutes of the meetings of the Investment Committee shall be available in Malta for review during the MFSA's compliance visits.

R4-2.2.7 The role of the Investment Committee will be to:

i. monitor and review the investment policy of the Scheme;
ii. establish and review guidelines for investments by the Scheme;
iii. issue of rules for Virtual Currency selection;
iv. set up the portfolio structure and asset allocation; and
v. make recommendations to the board of directors of the Scheme.

R4-2.2.8 Where the Scheme has not appointed an Investment Committee, the functions mentioned under Rule R4-2.2.7 above shall be undertaken by the directors of the Scheme and any reference to Investment Committee throughout this Chapter shall be construed as reference to the board of directors of the Scheme.

R4-2.2.9 The Investment Committee may delegate the day-to-day investment management of the assets of the Scheme to one or more officials of the Scheme referred to as the "Portfolio Manager/s".

R4-2.2.10 The Portfolio Manager(s) will effect day-to-day transactions within the investment guidelines set by the Investment Committee and in accordance with the investment objectives, policy and restrictions described in the Scheme's Offering Document/s.

R4-2.2.11 The Scheme shall obtain the written consent of the MFSA prior to the appointment or replacement a member of the Investment Committee or Portfolio Manager. The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information as it may it consider appropriate. The MFSA shall be entitled to be satisfied, on a continuing basis, of the fitness and properness, including competence, of the members of the Investment Committee and of the Portfolio Manager(s).

R4-2.2.12 The Scheme shall have adequate arrangements, in agreement with and subject to the approval of the MFSA, to ensure adequate monitoring of the activities of the Portfolio Manager(s) and the Investment Committee.

R4-2.2.13 The Scheme shall on a continuing basis ensure that it has sufficient management resources to effectively conduct its business.

Title 3 Dealings by Officials of the Scheme

R4-3.1.1 Where the Scheme allows its officials to deal for their own account, it is responsible for ensuring that such a practice does not lead to abuse. The standards and procedures to be adopted should include the following:

i. the Scheme must take appropriate steps to ensure that officials act in conformity with the statutory requirements concerning insider dealing and market abuse;

ii. the Scheme must take reasonable steps to ensure that its officials do not initiate personal transactions which might impair their ability to manage the Scheme's assets objectively and effectively or which might create a conflict between their own interest and that of the Scheme;

iii. internal mechanisms should be established to prompt the Compliance Officer's intervention if and when in respect of any staff member, abnormal behaviour or patterns concerning investment transactions are observed.

R4-3.1.2 All transactions undertaken by officials on their own account should be at "arm's length" – but this does not preclude discounts being allowed to officials.

Title 4 Documents and Records

R4-4.1.1 The Scheme or the Administrator on behalf of the Scheme shall keep such accounting and other records, in particular regarding the whole process of the investment management function and its monitoring thereof, as are necessary to enable it to comply with the Licence Conditions and to demonstrate that compliance has been achieved.

R4-4.1.2 Records are to be retained in Malta and made available to the MFSA for review as the need arises and during compliance visits. Records shall be retained for a minimum period of ten years. During the first two years they shall be kept at a place from which they can be produced within two working days of their being requested. After the first two years they shall be kept at a place from which they can be produced within five working days of their being requested.

Title 5 Conflicts of interest

R4-5.1.1 The Scheme shall act honestly, fairly and with integrity – in the best interests of its investors and/or shareholders and of the market. Such action shall include:

i. avoiding conflicts of interest where this is possible and, where it is not, ensuring – by way of disclosure, internal procedures or otherwise – that investors are treated fairly. The following procedures should be followed during Investment Committee meetings, where a member considers that s(he) has or may have a conflict of interest:

   (a) that person should declare that interest to the other members either at the meeting at which the issue in relation to which s(he) has an interest first arises, or if the member was not at the date of the meeting interested in the issue, at the next meeting held after s(he) became so interested;
   (b) unless otherwise agreed to by the other members, a member shall avoid entering into discussions in respect of any contract or arrangement in which s(he) is interested and should withdraw from the meeting while the matter in which s(he) has an interest is being discussed;
   (c) the interested member should not vote at a meeting in respect of any contract or arrangement in which s(he) is interested, and if s(he) shall do so, his/her vote shall not be counted in the quorum present at the meeting;
   (d) the minutes of the meeting should accurately record the sequence of such events.

ii. abiding by all relevant laws and regulations, including in respect of Prevention of Money Laundering and Funding of Terrorism;

iii. avoiding any claim of independence or impartiality which is untrue or misleading; and

iv. avoiding making misleading or deceptive representations to investors.

Chapter 5 Transparency Requirements

Title 1 Reporting and Disclosures

Section 1 Reporting

R5-1.1.1 The Scheme shall submit copies of the Scheme's annual audited financial statements and half-yearly report (if any) to the MFSA and such other information, as the MFSA may from time to time request. The half-yearly (if any) and annual reports shall be published and provided to investors of the Scheme, and submitted to the MFSA within two and six months respectively of the end of the period concerned.

R5-1.1.2 The Scheme shall also submit to the MFSA, at the following email address: fundreporting@mfsa.com.mt, any statistical returns which may be required by the Central Bank of Malta to fulfil European and other relevant reporting obligations.

R5-1.1.3 The Scheme shall notify the MFSA immediately if it is notified that its Auditor intends to qualify the audit report.

Section 2 Offering Document/s and Constitutional Document

R5-1.2.1 The Scheme shall publish an Offering Document/s, which shall be dated and the essential elements of which shall be kept up to date. The Offering Document/s shall be offered to investors free of charge before they become committed to investing.

R5-1.2.2 The Offering Document/s shall contain sufficient information for investors to make an informed judgement about the investment proposed to them and shall contain at least the information listed in Rules R3-3.1.1 to R3-3.71 of Part A of these Rules.

R5-1.2.3 Pursuant to Rule R5-1.2.2, the Offering Document/s of the Scheme shall contain sufficient disclosures and risk warnings in relation to the Scheme's proposed direct and/or indirect investment in Virtual Currencies.

R5-1.2.4 The Scheme shall approve the Offering Document/s including any amendments thereto, and confirm its approval to the MFSA.

R5-1.2.5 The Offering Document/s and any amendments thereto shall be sent to and approved by the MFSA before publication. The Scheme must submit a copy of its approval of the Offering Document/s, when this/these is/are submitted for the MFSA's approval.

R5-1.2.6 Any changes to the Constitutional Document of the Scheme must be approved by the MFSA in advance of implementation.

Section 3 Side Letters

R5-1.3.1 Side letters to be entered into by the Scheme must be circulated and approved by the board of directors of the Scheme prior to issue.

R5-1.3.2 Side letters issued by the Scheme should be retained in Malta at the registered office of the Scheme and should be available for inspection by the MFSA during compliance visits.

Title 2 Marketing

Section 1 Promotion

R5-2.1.1 The Investment Manager and/or any appointed intermediary/-ies may only promote the Scheme to Qualifying Investors. In the event of active promotion of the Scheme through the use of mass media advertising, investment advertisements should clearly indicate that the Scheme is not available for investment by the general public but is only available for investors satisfying the applicable Qualifying Investor criteria set out in the Scheme's Offering Document/s. The Scheme, its Investment Manager or Administrator shall in turn only accept subscriptions from Qualifying Investors.

R5-2.1.2 The promotion of the Scheme is subject to Article 11 of the Act, and to the requirements of Section 1 of Part BIII of the Investment Services Rules for Investment Services Providers as more fully explained in the relevant Guidance Notes issued by the MFSA.

R5-2.1.3 The Scheme may only be promoted in jurisdictions outside Malta if it satisfies the relevant rules of such jurisdictions.

R5-2.1.4 All publicity comprising an invitation to purchase units in the Scheme shall be approved by the Compliance Officer. All promotional material issued by the Scheme shall indicate that an Offering Document/s exist/s and the place/s where it/they, and any documents updating it/them, may be obtained.

Section 2 Qualifying Investor Declaration Forms

R5-2.2.1 Before investing in the Scheme, investors must sign the Declaration referred to in Appendix I stating that they qualify as "Qualifying Investors" and that they have read and understood the risk warnings included in the Offering Document/s. In the case of joint holders, all holders should individually qualify as "Qualifying Investors". The Scheme may rely upon the Declaration provided by the investor in the absence of information to the contrary.

R5-2.2.2 Copies of the Qualifying Investor Declaration Forms and records evidencing compliance with the local Prevention of Money Laundering

and Funding of Terrorism requirements should be held in Malta at the registered office of the Scheme and should be available for inspection by the MFSA during compliance visits.