

Consultation Procedure

Consultation on the proposed changes to the Investment Services Rules largely to transpose the UCITS IV Directive

The MFSA invites comments by not later than the 1st June, 2011 on the draft revised Investment Services Rules for Investment Services Providers attached to this document, which transpose various articles of the UCITS IV Directive as detailed further in this Circular. Interested parties are to send their comments in writing addressed to the Director – Securities and Markets Supervision Unit, MFSA. The industry will be required to comply with the new requirements by the 1st July 2011.

Explanatory Note

The documents circulated by the MFSA for the purpose of consultation are in draft form and consist of 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.

Background

Reference is made to the Feedback Statement issued on the 13th April 2011 wherein the Authority had advised that considering the replies received to its original consultation of the 14th March 2011, regarding the implementation of the UCITS IV Directive (“the Directive”) into Maltese law, the Authority became aware that this Directive is best applied through the Investment Services Rules. Consequently, the MFSA has reconsidered the approach of transposing the requirements of the Directive primarily through Legal Notices and it has decided that, in order to be in a position to effect any required clarifications to the applicable requirements without undue delay should the need arise, the main provisions of the Directive will be transposed by way of Investment Services Rules.

The purpose of this circular is to provide a summary of the proposed revisions to the Investment Services Rules for Investment Services Providers (“the Rule Book”), primarily to cater for the required transposition of part of the Directive. This circular also serves the purpose of a consultation document on the proposed amendments to the Rule Book that are explained below.

Part A to the Investment Services Rules for Investment Services Providers

Part A to the Investment Services Rules for Investment Services Providers is being amended primarily to:

[i] Replace the references made to the Directive 85/611/EEC with reference to the recast UCITS IV Directive 2009/65/EC, the relevant Level II implementing measures and the ESMA Level III Guidance;

[ii] Replace all references to the Undertakings for Collective Investment in Transferable Securities Regulations, 2004 with the new proposed Investment Services Act (UCITS Management Company Passport) Regulations, 2011 which will replace the former regulations;

[iii] Refer to the reorganisation of Part B of the Rule Book into Part BI which applies to Investment Services Licence Holders excluding UCITS Management Companies, and Part BII of the Rule Book which stipulates the Standard Licence Conditions (“SLCs”) applicable to UCITS Management Companies; and

[iv] Refer to the reorganisation of Schedules D and E to Part A of the Rule Book, which provide for notification forms to be completed by UCITS Management Companies wanting to passport their services in other EU jurisdictions.

The proposed changes to Part A have been made by way of tracked changes.

Schedule D to Part A of the Investment Services Rules for Investment Services Providers

Schedule D has been reorganised into two Schedules, Schedule DI and Schedule DII. Schedule DI retains the content of the original Schedule D and accordingly provides the notification form for Investment Services Licence Holders wishing to provide cross-border services under the freedom to provide services in another EU or EEA Member State. The new proposed Schedule DII incorporates the notification letter for UCITS Management Companies wishing to provide cross-border services under the freedom to provide services in another EU or EEA Member State.

Schedule E to Part A of the Investment Services Rules for Investment Services Providers

Schedule E has been reorganised into two Schedules, Schedule EI and Schedule EII. Schedule EI retains the content of the original schedule E and accordingly provides the notification form for Investment Services Licence Holders wishing to provide cross-border services via the establishment of a branch in another EU or EEA Member State. The new proposed Schedule EII incorporates the notification letter for UCITS Management Companies wishing to provide cross-border services under the freedom to provide services in another EU or EEA Member State.

Part B to the Investment Services Rules for Investment Services Providers

Part B has been reorganised into two parts, Part BI and Part BII, contents of which shall be as follows:

Part BI to the Investment Services Rules for Investment Services Providers

Part BI which applies to Investment Services Licence Holders excluding UCITS Management Companies retains the content of the original Part B, amended as follows:

[i] Reference to the simplified prospectus has been replaced with reference to the Key Investor Information Document (“KIID”). Part BI also transposes:

Articles 80(1), 80(2), and 80(3) of the UCITS IV Directive 2009/65/EC;

[ii] Certain obligations with respect to professional indemnity insurance have been amended;

[iii] Introducing new supplementary conditions in Section 9 applicable to a Custodian of a UCITS Scheme. These conditions transpose:

Articles 22(2), 22(3), 23(1), 23(2), 23(3), 23(5), 24, 25(1), 25(2), 26, 40(1), 33(5) and 61(2) of the UCITS IV Directive 2009/65/EC;

Article 26 of the UCITS Implementing Directive 2010/42/EU; and

Articles 30, 31(1)(a)(c), 31(1)(b), 31(2), 32, 33, 34, 35, and 36 of the UCITS Implementing Directive 2010/43/EU.

[iv] Deleting the SLCs in section 10 which are applicable to a Maltese UCITS Management Company.

The proposed changes to Part B, which has now been renamed as Part B I, have been made by way of tracked changes.

Part BII to the Investment Services Rules for Investment Services Providers

Part B II stipulates the standard licence conditions applicable to Maltese UCITS Management Companies and includes the contents of the UCITS IV Directive 2009/65/EC as well as the UCITS Implementing Directive 2010/43/EU on organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company. This Part transposes:

Articles 6(2), 6(3), 6(4), 7(1), 12(1), 12(2), 13(1), 13(2), 14(1), 15, 51(1) and Annex II of the UCITS IV Directive; and

Articles 4, 5, 6(1), 6(2), 6(3), 7(1), 7(2), 8(1), 8(2), 8(3), 9(1), 9(2), 9(3), 9(4), 9(5), 9(6), 10(1), 10(2), 10(3), 11(1), 11(2), 12(1), 12(2), 12(3), 12(4), 13(1), 13(2), 13(3), 14, 15(1), 15(2), 16(1), 16(2), 16(3), 17(1), 17(2), 18(1), 18(2), 19(1), 19(2), 20(1), 20(2), 20(3), 21(1), 21(2), 21(3), 22(1), 22(2), 22(3), 22(4), 23(1), 23(2), 23(3), 23(4), 23(5), 24(1), 24(2), 24(3), 24(4), 25(1), 25(2), 25(3), 25(4), 25(5), 26(1), 26(2), 26(3), 26(4), 27(1), 27(2), 28(1), 28(2), 28(3), 28(4), 29(1), 29(2), 38(1), 38(2), 38(3), 39(1), 39(2), and 39(3) of the UCITS Implementing Directive 2010/43/EU.

Appendix 11 of Part B to the Investment Services Rules for Investment Services Providers

Appendix 11 contains rules on risk management, counterparty risk exposure and issuer concentration. This appendix transposes/implements:

Articles 40(1), 40(2), 40(3), 40(4), 41(1), 41(2), 41(3), 41(4), 42(1), 42(2), 42(3), 42(4), 42(5), 43(1), 43(2), 43(3), 43(4), 43(5), 43(6), 44(1), 44(2), 44(3), 44(4), 45(1), and 45(2) of the Commission Directive 2010/43/EU

The Guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS [CESR/10-788]; and

The Guidelines to competent authorities and UCITS management companies on risk measurement and the calculation of global exposure for certain types of structured UCITS [ESMA/2011/112].

Part C to the Investment Services Rules for Investment Services Providers

Part CII has been amended, largely to remove reference to Standard Licence Conditions applicable to European Management Companies providing cross-border services in Malta under the freedom to provide services.

No material changes have been made to Part CI.

Contacts

Any queries or requests for clarifications in respect of the above should be addressed to: Mr Christopher P Buttigieg, Deputy Director, Securities and Markets Supervision Unit - Tel: 25485229 cbuttigieg@mfsa.com.mt, Mr Jonathan Sammut, Manager, Securities and Markets Supervision Unit - Tel: 2548545 jsammut@mfsa.com.mt or Dr Isabelle Agius, Manager, Regulatory Development Unit - Tel: 25485359 iagius@mfsa.com.mt.

Communications Unit
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