

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

INVESTMENT SERVICES RULES FOR PROFESSIONAL INVESTOR FUNDS

PART B

Part B: Professional Investor Funds targeting Qualifying Investors

1. INTRODUCTION

1.01 A manager of a scheme which intends to use the EuVECA or EuSEF designation for the purposes of marketing the scheme as a European venture capital fund or European social entrepreneurship fund in terms of Regulations (EU) No 345/2013¹ and 346/2013² respectively shall further refer to a comply with the applicable provisions of the aforementioned EU Regulations as well as with the Rules prescribed in this section of the Rulebook. In the case of conflict between the provisions of these Rules and the aforementioned EU Regulations, the provisions of the latter shall prevail.

1.02 Apart from the conditions listed in this Part of the Rules, where the scheme adopts different structures or is self-managed, it shall also be subject to the additional Rules applicable thereto as prescribed in Appendix I to these Rules.

1.03 Where the scheme is established as a money market fund, it shall comply with the provisions of Appendix IV applicable to schemes established as money market funds.

1.04 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.

1.05 The scheme shall co-operate in an open and honest manner with the MFSA and inform it promptly of any relevant information. It shall co-operate fully with any inspection or other enquiry carried out by or on behalf of the MFSA and provide promptly any relevant information. The scheme shall provide the MFSA with such information and returns as the MFSA may require to

Commented [IA1]: A maximum period has been introduced within which a scheme is to commence operations.

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¹ Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds.

² Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds.

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monitor compliance with the conditions referred to in the Act and any rules and regulations issued thereunder.

- 1.06 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.

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- 1.07 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.

- 1.08 The scheme shall notify the MFSA in writing of:

- (a) a change in the Scheme's name or business name (if different) at least one month in advance of the change being made;
- (b) a change of address: at least one month in advance;
- (c) 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;
- (d) the departure of a director or senior manager, portfolio manager, compliance officer, money laundering reporting officer and risk manager within 14 days of the departure.

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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;
- (D) the proposed replacement.

The scheme shall also request the director or senior manager, portfolio manager, compliance officer, money laundering reporting officer and 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 MFSA together with the scheme's notification of departure.

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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.

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.

- (e) 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;
- (f) 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;
- (g) 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;
- (h) 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;
- (i) any instances of incorrect pricing;

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

- (i) the manner in which the valuation occurred;
- (ii) the date of identification and the full details of the dealing day effected;
- (iii) details of the financial impact of the valuation error and/or the wrong prices/valuation in the case where subscriptions/redemptions were dealt with;
- (iv) details of any remedial measures which result from the valuation errors for the scheme and/or its investors; and

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- (v) the communications to be made to the investors particularly if remedial measures are adopted.
- (j) any other material information concerning the scheme, its business or its officials in Malta or abroad – immediately upon becoming aware of the matter.

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1.09 The scheme shall obtain the written consent of the MFSA before:

- (a) taking any steps to cease its operations;
- (b) agreeing to sell or merge the whole or any part of the undertaking;
- (c) the appointment of a director or senior manager³, compliance officer, money laundering reporting officer and (and where the scheme is self-managed, also of a risk manager, investment committee member, portfolio manager and investment advisor - where the investment advisor is an individual) in advance. The request for consent shall be accompanied by a Personal Questionnaire in the form set out in Schedule B to Part A of these Rules – duly completed by the person proposed. The individual proposed as investment advisor to a self-managed scheme need not complete the Personal Questionnaire.

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 up-dates thereto. This confirmation is to be countersigned by an authorised official of the Licence Holder, confirming that he/she has seen the said PQ.

- (d) the change in the responsibilities of a director or senior manager⁴ 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 three 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:

³ For the purposes of this paragraph, 'senior manager' should be interpreted as the person occupying the most senior role following that of director, so that in the case where there are various management grades, it is the most senior manager who will require the MFSA's authorisation.

⁴ For the purposes of this paragraph, 'senior manager' should be interpreted as the person occupying the most senior role following that of director, so that in the case where there are various management grades, it is the most senior manager who will require the MFSA's authorisation.

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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.

1.10 The scheme shall ensure compliance with the Rules included in this Rulebook.

1.11 Without prejudice to Rule 1.10, the scheme, or the AIFM on behalf of the scheme may submit to the MFSA a request for a derogation from any specific Rule included in the Rulebook.

1.12 A request submitted in terms of Rule 1.11 shall include the following:
(a) an indication of the specific Rule and the content thereof;
(b) reasons why a derogation from this Rule is being requested;
(c) 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;
(d) the expected duration of the derogation; and
(e) a resolution of the governing body of the scheme supporting the request for a derogation.

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

1.14 The scheme will be expected to assess on a continuous basis and certainly prior to expiration whether the derogation is still required.

1.15 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.

1.16 The scheme, or the fund 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 or instruments of incorporation of the scheme as soon as the scheme or its manager or administrator becomes aware of the breach.

1.17 Any notification to the MFSA of a breach shall as a minimum include the following information:
(a) an indication of the Rule or the investment restriction breached (in the case advertent breaches) and the contents thereof;
(b) the date/period when the breach occurred and when/by whom it was discovered;
(c) the nature of the breach and the manner in which it occurred;
(d) 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;

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- (e) the action taken to prevent the recurrence of the breach.
- 1.18 The scheme shall disclose the identity of the regulated entity and the regulator in all correspondence, advertisements and other documents. Wording similar to the following shall be used: "Licenced by the MFSA as a Qualifying Professional Investor Fund."
- 1.19 The MFSA shall not liable in damages for anything done or omitted to be done unless the act or omission is shown to have been done or omitted to be done in bad faith.
- 1.20 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.
- 1.21 The scheme shall not be required to make public the issue and redemption prices of its units or shares. However, these must be made available to unit-holders upon request.
- 1.22 If dealings in the units and/or the issue of NAV are suspended, the scheme, the manager or the fund administrator on behalf of the scheme shall inform the MFSA forthwith stating the reason for this suspension.
- 1.23 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:
(a) the reason for the suspension of dealings and determination of the NAV;
(b) a confirmation from the Administrator that the underlying investors of the scheme have been informed of the suspension;
(c) a resolution from the governing body of the scheme confirming the approval of the suspension;
(d) a confirmation from the scheme, the fund 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 memorandum and instruments of incorporation of the scheme have been fully complied with;
(e) 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 (b) and (c) above need not be submitted.
- 1.24 The scheme, the manager or the fund 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

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years. During the first two years, they shall be kept in 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 in a place from which they can be produced within five working days of their being requested.

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- 1.25 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 the approach to be adopted. If requested to do so by the MFSA, the scheme and its 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.

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- 1.26 Any changes to the financial year end of the scheme shall be notified to the MFSA and disclosed in the offering document.

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- 1.27 The scheme shall at all times monitor the regulatory status of the fund manager. In the event that the manager is no longer a de minimis fund manager (where applicable), the scheme shall ensure that it becomes compliant with the requirements prescribed in the AIFM Directive as outlined in Appendix V to these Rules.

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2. GOVERNING BODY OF THE SCHEME

2.01 The governing body⁵ of the scheme shall be responsible for ensuring that the scheme complies with its obligations under these Rules.

2.02 The governing body of the scheme shall at all times have one or more members independent from the manager and the depositary/ 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.

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

2.04 The members of the governing body shall act honestly and in good faith in what they consider to be the best interests of the scheme and its investors.

2.05 The members of the governing body shall exercise reasonable care, skill and diligence.

2.06 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.

2.07 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.

2.08 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.

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

2.10 Whilst the governing body of the scheme may be entitled under the memorandum and articles of association 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.

2.11 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

⁵ which includes the board of directors, trustee, or general partners where applicable

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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 fund.

2.12 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.

2.13 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.

2.14 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.

2.15 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.

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3. SERVICE PROVIDERS

3.01 The MFSA shall be satisfied on a continuing basis of the fitness and properness of any service provider appointed by the scheme.

3.02 The scheme, together with the service providers appointed shall comply with the applicable laws, to which they may respectively be subject.

Manager

3.03 The scheme shall appoint a third party manager approved by the MFSA with responsibility for the discretionary investment management of the assets of the scheme.

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3.04 The manager may be:

- (a) a *de minimis* fund manager in possession of a licence issued in terms of the Investment Services Act having an established place of business in Malta; or
- (b) a *de minimis* fund manager registered in a Member State in accordance with article 3(1) of the AIFMD; or
- (c) a manager licenced in a recognised jurisdiction.

3.05 Where the scheme does not appoint a third party manager, it shall be subject to the additional rules applicable to self-managed schemes set out in Appendix I to these Rules.

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3.06 The manager shall have the business organisation, systems, experienced and expertise deemed necessary by the MFSA for it to act as manager. The scheme shall be required to satisfy the MFSA that the proposed manager meets the above requirements.

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3.07 Where the manager is a *de minimis* fund manager 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.

3.08 The manager shall have sufficient financial resources and liquidity at its disposal to enable it to conduct its business, and such organisation, systems, experience and expertise deemed necessary by the MFSA for it to act as manager. The scheme shall be required to satisfy the MFSA that the proposed manager meets the above requirements on a continuing basis.

3.09 The scheme shall obtain the written consent of the MFSA prior to the appointment or replacement of any party to act in the capacity of manager of the scheme. The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information it considers appropriate.

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3.10 The scheme shall be subject to the investment objectives, policies and restrictions outlined in the offering document. The manager shall take all reasonable steps to comply with the investment policies and restrictions of the scheme.

Fund administrator

3.11 The scheme shall have an appointed fund administrator at all times.

3.12 Where the scheme is externally managed, the administration function may be carried out by the fund manager of the scheme, unless the scheme outsources such function to an independent fund administrator.

3.13 Where the scheme appoints the fund manager and the fund manager opts to undertake the administration function, it shall ensure that the fund 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 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 fund administration function.

3.14 The fund 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 Member State or Recognised Jurisdiction and in possession of the necessary authorisation to carry out the administration function.

3.15 A self-managed scheme shall have an appointed independent fund Administrator in place at all times.

3.16 The fund administrator shall have the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to act as fund administrator. The scheme shall satisfy the MFSA that the proposed fund administrator meet the above requirements.

3.17 The scheme shall obtain the written consent of the MFSA before the appointment or replacement of any party to act in the capacity of fund 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 considers appropriate.

Investment adviser

3.18 The scheme may appoint an investment adviser. The investment adviser shall have the business organisation, systems, experience and expertise deemed

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necessary by the MFSA for it to act as investment adviser. The scheme shall satisfy the MFSA that the proposed adviser meets the above requirements.

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- 3.19 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 adviser to the scheme. The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information it considers appropriate.

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Depositary

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- 3.20 The assets of the scheme shall be subject to adequate safekeeping arrangements. The scheme may entrust its assets to a depositary or prime broker for safekeeping.

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- 3.21 In the absence of an appointed depositary, the scheme will be responsible for the establishment of proper arrangements for the safekeeping of assets. These safekeeping arrangements shall be described in the offering document and shall be subject to the approval of the MFSA.

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- 3.22 Where appointed, the depositary shall comply with the applicable provisions prescribed in the Investment Services Act (Custodians of Collective Investment Schemes) Regulations.

- 3.23 The scheme, shall obtain the written consent of the MFSA before the appointment or replacement of any party to act in the capacity of depositary 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 it considers appropriate.

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- 3.24 Where appointed the depositary or the prime broker shall be separate and independent from the manager and shall act independently and solely in the interests of the unit-holders. 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.

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Compliance officer

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- 3.25 Responsibility for the scheme's compliance with its licence conditions rests with the governing body of the scheme.

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- 3.26 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 its obligations under the Prevention of Money Laundering Act, the Prevention of Financial Markets Abuse Act and the regulations issued

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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.

3.27 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.

3.28 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.

3.29 The “Compliance Report” shall indicate any:

- (a) breaches to the investment and borrowing restrictions;
- (b) breaches to the Rules outlined in this Rulebook;
- (c) complaints from unit or shareholders in the scheme and the manner in which these have been handled;
- (d) material valuation errors (higher than 0.5% of NAV) and the manner in which these have been handled;
- (e) material compliance issues during the period covered by the Compliance Report.

3.30 The Compliance Report should also include a confirmation that all the local prevention of money laundering requirements have been satisfied. This confirmation should be obtained from the scheme’s money laundering reporting officer.

3.31 A copy of the Compliance Report shall be held in Malta at the registered office of the scheme and made available to the MFSA during compliance visits.

Money laundering reporting officer

3.32 Responsibility for the scheme’s compliance with its prevention of money laundering obligations rests with the governing body of the scheme.

3.33 The scheme shall at all times have a money laundering reporting officer.

Auditor

3.34 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.

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3.35 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 the auditor.

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3.36 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.

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3.37 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:

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- a) a director, partner, qualifying shareholder, officer, representative or employee of the scheme;
- b) a partner of, or in the employment of, any person in (a) above;
- c) a spouse, civil partner, parent, step-parent, child, step-child or other close relative of any person in (a) above;
- d) a person who is not otherwise independent of the scheme; or
- e) a person disqualified by the MFSA from acting as an 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.

3.38 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 appointment. The scheme shall confirm in writing to its auditor its agreement to the terms in the letter of engagement.

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3.39 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 section 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:
 - is likely to lead to a serious qualification or refusal of his audit report on the accounts of the Scheme; or
 - constitutes or is likely to constitute a material breach of the legal and regulatory requirements applicable to the scheme in or under the Act;
 - relates to any other matter which has been prescribed.

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- 3.40 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; the fees and charges so incurred being payable by the scheme.
- 3.41 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. This management letter shall be sent to MFSA.

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4. INVESTMENT OBJECTIVES, POLICIES AND RESTRICTIONS

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4.01 The scheme shall be subject to the investment objectives, policies and restrictions outlined in its offering document. In addition, where the scheme intends carrying out its investments through the use of trading companies or special purpose vehicles, it shall also be subject to the additional rules regarding the use of such vehicles outlined in Appendix I.

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4.02 The scheme or the manager on behalf of the scheme shall take all reasonable steps to comply with the investment policies and restrictions of the scheme ~~within six months from the launch thereof or upon reaching a value equivalent to EUR 2,500,000.~~ The scheme or the manager on behalf of the scheme shall not be bound to comply with the principle of risk spreading.

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4.03 Changes to the investment policies and restrictions of the scheme shall be notified to investors in advance of the change.

Commented [IA51]: Formerly SLC 1.40

4.04 Changes to the investment objectives of the scheme shall be notified to the investors in advance of the changes. The notice period should be sufficiently long to allow for redemption requests to be submitted by investors and processed prior to the changes being effected. The change in the investment objectives shall 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.

Commented [IA52]: Formerly SLC 1.41

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

Commented [IA53]: Formerly SLC 1.42

- (a) if one or more of the scheme's investment restrictions are at any time contravened for reasons beyond the control of the manager or the scheme, the 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 unit-holders and, in any event, within the period of six months beginning on the date of discovery of the contravention of such restriction(s).

The above rule 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 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.

- (b) a contravention of an investment restriction which may arise due to the circumstances outlined in paragraph (a) above shall not be considered as a breach of a licence condition and will therefore not be subject to MFSA's notification requirements. However, where the contravention is

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not remedied by the manager or the scheme within the maximum six month period stipulated in paragraph (a) above, a breach of this rule is deemed to arise and the relevant notification requirements will apply.

Cross sub-fund investments

4.06 A sub-fund may invest in units of one or more sub-funds within the same scheme, subject to this being permitted in the instruments of incorporation and the offering document of the said scheme and subject to the following:

- (a) the investment company should in its memorandum of association elect to have the assets and liabilities of each subfund comprised in that company treated as a patrimony separate from the assets and liabilities of each other subfund of such company in terms of regulation 9 of the Company Act (Investment Companies with Variable Share Capital) Regulations;
- (b) the subfund is allowed to invest up to 50% of its assets into any subfund within the same scheme;
- (c) the target subfund(s) may not themselves invest in the subfund which is to invest in the target subfund(s);
- (d) in order to avoid duplication of fees, where the manager of the subfund and the manager of the target subfund is the same or (in the case of different managers) where one manager is an affiliate of the other, or in the case where a self-managed scheme invests in another self-managed scheme, where both schemes are linked to a great extent by common management and/or investment management personnel, only one set of management (to the exclusion of performance fees) subscription and/or redemption fees applies between the subfund and the target subfund, provided that this restriction shall apply only in respect of and to the extent (up to the portion) of the investment of the subfund in the target subfund;
- (e) for the purposes of ensuring compliance with any acceptable capital requirements, cross-investments will be counted once;
- (f) any voting rights acquired by the subfund from the acquisition of the units in the target subfund shall be disappplied as appropriate.

Commented [IA54]: Proposed change to extend the removal of fees to include circumstances where a self-managed scheme invests in another self-managed scheme

Rules on foreign currency lending

4.07 The scheme shall, in as far as these may be applicable to any foreign currency lending which it may carry out, abide by the high level principles on foreign currency lending as outlined in MFSA Rule 1 of 2012 on foreign currency lending, which is modelled on the Recommendation of the European Systemic Risk Board on lending in foreign currencies (ESRB/2011/1).

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4.08 Foreign currency lending means lending in any currency other than the legal tender of the country in which the borrower is domiciled. This includes situations where the Euro is the foreign currency due to the borrower's domicile being outside the Eurozone.

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- 4.09 Where the scheme has engaged in any form of foreign currency lending during the period under review, it shall submit a confirmation to this effect together with its annual report. Any foreign currency lending activity shall be indicated as a percentage of the scheme's total NAV. A scheme which has not carried out any foreign currency lending during the period under review is not required to submit a 'nil' return.

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Side letters

Commented [IA58]: Formerly SLCs 1.56 and 1.57

- 4.10 Side letters to be entered into by the Scheme must be circulated and approved by the governing body of the scheme prior to issue.
- 4.11 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.

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Distributions of income

- 4.12 The scheme shall effect any distributions of income in accordance with the provisions of its instruments of incorporation and/or offering document.

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Additional rules applicable to schemes effecting drawdowns on investors' committed funds

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- 4.13 Schemes which are established as SICAVs and which wish to effect drawdowns on investors' committed funds are required to comply with the provisions regulation 15 of the Companies Act (Investment Companies with Variable Share Capital) Regulations⁶ on issue of shares at a discount. In addition, such schemes shall comply with Rules 4.14 to 4.17 hereunder.
- 4.14 The scheme shall retain at its registered office, a copy of its written agreements with investors who have committed to invest in the scheme. These agreements shall be available for inspection by the MFSA during compliance visits.
- 4.15 Any request on committed funds shall be effected pro-rata amongst all relevant investors in the scheme.
- 4.16 The scheme shall only make a fresh call for further commitments once all outstanding commitments from existing investors have been requested.
- 4.17 Reference to "minimum investment" shall be construed as a reference to "minimum commitment".

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⁶ S.L. 386.02

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Additional Rules applicable to acquisitions in specie

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4.18 The scheme shall issue units/shares for a consideration other than cash in accordance with the provisions of its instruments of incorporation and the provisions of the offering memorandum.

4.19 A report on any consideration other than cash shall be drawn up by a valuer which shall satisfy the following criteria:

- (a) the valuer needs to be independent of the scheme, its officials or any other service providers of the scheme;
- (b) the valuer needs to be of good standing with recognised and relevant qualifications and an authorised member of a Recognised Professional Body in the jurisdiction of the assets;
- (c) the valuer shall be appointed by the Directors of the scheme subject to the approval of the appointment by the auditors of the scheme.

4.20 The report drawn up in accordance with Rule 4.19 shall include:

- (a) a description of each of the assets comprising the consideration;
- (b) the value of each asset and a description of the method of valuation used;
- (c) a confirmation that the value of the consideration is at least equal to the net asset value of the shares to be issued in return for such consideration.

4.21 The report shall be held in Malta at the registered office of the scheme and shall be made available to the MFSA for inspection during the compliance visits.

4.22 Shares on the scheme shall only be used (in favour of the investor) once the assets referred to in the valuer's report have been transferred in favour of the scheme to the satisfaction of the depositary and/or prime broker.

Additional rules applicable to financing of SPVs

4.23 Where a sub-fund proposes to invest through the use of SPVs and thus the scheme will grant any form of financing to the SPV, the terms of the loan facility arrangements between the scheme and the SPV shall inter alia provide:

- (a) that the scheme should not be obliged to honour any request for lending made by the SPV in the case where the scheme does not have sufficient liquid assets (such as cash/ deposits) or if the Scheme deems it prudent to retain such assets to finance other investments of the fund or to keep such assets as reserves for any (current/ future) contingent liability;
- (b) that any amount borrowed by the SPV 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 shareholders in the case where these cannot be satisfied from liquid assets available to the scheme; and

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- (c) that the proceeds of any loan made to the SPV shall be used by the SPV solely to finance the acquisition of the asset which shall always reflect and be in line with the objectives and policies of the fund; and
- (d) for any other safeguards deemed appropriate by the directors of the Scheme.

4.24 The scheme shall make available to the MFSA for inspection during compliance visits the following documentation:

- (a) registration certificates and other registration documents of any underlying SPV, including full details of the relevant shareholders and directors (where applicable); and
- (b) audited financial statements of any underlying SPV (where applicable).

Additional Rules applicable in the case of investments through joint ventures in the case of minority interests

Additional Rules applicable in the case of investments through joint ventures in the case of minority interests

4.25 Where a scheme proposes to invest through joint ventures, it shall safeguard the interest of shareholders in the instances where it may not have majority control. Furthermore, the scheme shall ensure the suitability of investments undertaken by such joint ventures and ensure an on-going basis that they reflect the investments objectives and policies of the Scheme

4.26 The investment decisions and the scheme's participation in any particular project shall be undertaken in such a way which will enable the subfund to evaluate the proposed investment in each project to its satisfaction prior to commitment.

4.27 The objectives of such companies shall not change without the consent of the scheme.

4.28 The scheme shall ensure that it is represented on the board of directors of the joint venture entity (where this is a corporate entity) or on the investment decision-making organ or process of the joint venture (where this is not a corporate entity).

4.29 The scheme shall seek a contractual right under the joint venture agreement, to ensure that in the case of a proposed change in the investment objectives of the joint venture, the scheme shall either:

- (a) cease its participation in the joint venture; or
- (b) block such a change either through a requirement of the scheme's prior consent to such change or through a qualified majority voting requirement or otherwise.

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5. TRANSPARENCY REQUIREMENTS

Offering document

5.01 The scheme shall publish an offering document, which shall be dated and the essential elements of which shall be kept up-to-date. The offering document shall be offered to investors free of charge before they become committed to investing.

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5.02 The offering document shall contain sufficient information for investors to make an informed judgement about the investment proposed to them and shall contain at least the information outlined in Appendix II.

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5.03 The scheme shall approve the offering document including any amendments thereto, and confirm its approval to the MFSA.

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5.04 The offering document and any amendments thereto shall be sent to and agreed with the MFSA prior to publication. The scheme must submit a copy of its approval of the offering document, when this is submitted for the MFSA's approval.

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5.05 Where the scheme, established as a SICAV, wishes to effect draw-downs on investors' committed funds, it shall comply with the disclosure requirements applicable to the offering document as prescribed in regulation 15(3) of the Companies Act (Investment Companies with Variable Share Capital) Regulations, in addition to the applicable disclosure requirements outlined in Appendix II to Part B of these Rules under the heading "Risk Warnings".

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Instruments of incorporation

5.06 Any changes to the instruments of incorporation of the scheme must be approved by the MFSA in advance of implementation.

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Annual report

5.07 The scheme, the manager or the fund administrator on behalf of the scheme shall submit copies of the scheme's audited financial statements to the MFSA and such other information as the MFSA may from time to time request.

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5.08 The financial statements shall not be submitted to the MFSA unless these are a full and complete set of the required documentation and signed by all the signatories as required.

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5.09 In the case where the submission of the financial statements to the MFSA will be justifiably and exceptionally delayed, the scheme shall at least one week prior to the deadline for the submission of the financial statements, submit a request with the MFSA to consider the possibility of such a delay. This request shall be accompanied by the following documents:

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- (a) a resolution from the governing body of the scheme setting out clearly the reasons which justify the delay and requesting the MFSA to grant the proposed extension period which should be clearly stated in the resolution;
- (b) a written confirmation from the fund administrator of the scheme that the underlying investors of the scheme have been informed of the delay and the reasons for such delay;
- (c) a written confirmation from the external auditor of the scheme supporting the request for extension and confirming that the audit will be completed within the proposed extended deadline.

Provided that where the delay consists of two or three days, the documents requested in paragraphs (a) to (c) need not be submitted.

- 5.10 The half-yearly report (if any) the annual report shall be published and provided to the investors of the scheme. Furthermore, the half-yearly report and the annual report shall be submitted to the MFSA within two and six months respectively of the end of the period concerned.

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- 5.11 Where applicable, the scheme, or the fund manager or fund administrator on behalf of the scheme, shall also include with the annual report, a confirmation in terms of Rule 4.09 of these Rules on the involvement of the scheme in foreign currency lending.

- 5.12 The accounting information given in the annual report, shall be prepared in accordance with IFRSs as adopted by the EU and with the accounting rules laid down in the instruments of incorporation.

- 5.13 The accounting information given in the annual report shall be audited by a certified auditor in accordance with Rule 3.35. The auditor's report, including any qualifications shall be reproduced in full in the annual report.

Other reporting obligations

- 5.14 The scheme shall submit to the MFSA, on the following e-mail 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.

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- 5.15 When requested to do so by the MFSA, a scheme shall also submit, on the following e-mail address: statistics@mfsa.com.mt any statistical returns that may be required under MFSA Rule 1 of 2012 on foreign currency lending.

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Promotion

- 5.16 The manager and/or any appointed intermediary may only promote the scheme to qualifying investors. In the event of active promotion of the

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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 criteria applicable to qualifying investors as set out in the scheme's offering document. The scheme, its manager or fund administrator may in turn only accept subscriptions from qualifying investors.

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- 5.17 The promotion of the scheme is subject to section 11 of the Act, and to the requirements prescribed in Section 3 of Part B of the Investment Services Rules for Investment Services Providers as more fully explained in the relevant Guidance Notes issued by the MFSA.

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- 5.18 The scheme may only be promoted in jurisdictions outside Malta if it satisfies the relevant rules of such jurisdictions.

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- 5.19 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 exists and the places where it, and any documents updating it may be obtained.

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Minimum entry levels and Qualifying Investor Declaration Forms

- 5.20 The minimum investment which the scheme may accept is EUR 100,000 or its currency equivalent. Once the minimum investment has been made, any additional amount may be invested by the total amount invested must at any time not be less than EUR 100,000 or its currency equivalent unless this is the result of a fall in the net asset value. In the case of an umbrella scheme where each of the subfunds is set up as a Qualifying Professional Investor Fund, the EUR 100,000 threshold or its currency equivalent may apply on a per scheme basis rather than on a per subfund basis.

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- 5.21 Before investing in the scheme, investors must sign the declaration referred to in Appendix III stating that they qualify as 'Qualifying Investors' and that they have read and understood the risk warnings in the offering document. 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.

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- 5.22 Copies of the Qualifying Investor Declaration Forms and records evidencing compliance with the local prevention of money laundering 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.

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