

INVESTMENT SERVICES RULES FOR RETAIL COLLECTIVE INVESTMENT SCHEMES

PART B

Part BII: Malta based UCITS Collective Investment Schemes

1. INTRODUCTION

- 1.01 In addition to the requirements included in this Part, the UCITS scheme (hereinafter referred to as ‘the scheme’) shall comply with the provisions of the relevant regulations issued under the Investment Services Act, 1994, as may be amended or supplemented at any time.
- 1.02 Apart from the conditions listed in this Part of the Rules, where the scheme adopts different structures, it shall also be subject to the supplementary Rules applicable thereto as prescribed in Appendix V to these Rules.
- 1.03 Where the scheme is setup as a self-managed scheme and has accordingly not appointed a Maltese or European management company as its designated investment manager, the scheme shall also be subject to the provisions of Appendix IX applicable to self-managed schemes.
- 1.04 Where the scheme is established as a money market fund, it shall comply with the provisions of Appendix VIII applicable to schemes established as money market funds.
- 1.05 The MFSA shall be entitled to be satisfied, on a continuing basis, of the fitness and properness of any party appointed by the scheme.
- 1.06 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.

1.07 The MFSA has the right, from time to time, and following advance notification to the scheme, to vary or revoke any licence condition or to impose any new conditions.

1.08 The scheme shall commence its activities within 12 months of 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

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circumstances of the case, the MFSA may decide to suspend or cancel the licence in accordance with the relevant provisions of the Act.

1.09 The scheme or the management company on behalf of the scheme shall comply with the provisions of the prospectus and other instruments of incorporation, including the investment policies and restrictions of the scheme.

1.10 The scheme, or the management company on behalf of the scheme, shall ensure compliance with the Rules included in this Rulebook.

1.11 Without prejudice to Rule 1.10, the scheme, or the management company 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, or the management company on behalf of 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, or the management company on behalf of the scheme deems that the derogation is still appropriate and required, the scheme or the management company on behalf of the scheme shall submit to the MFSA an updated assessment prior to the expiration of such derogation.

1.16 The scheme, or the management company on behalf of the scheme shall notify the MFSA of any breach of the Rules or of any of the provisions of the offering document or instruments of incorporation of the scheme as soon as it becomes aware of the breach.

1.17 Any notification to the MFSA of a breach shall as a minimum include the following information:

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- (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;
- (e) the action taken to prevent the recurrence of the breach.

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1.18 If the dealings in the units or shares and /or the issue of NAV are suspended, the scheme, the management company or the Administrator on its behalf shall inform the MFSA forthwith stating the reason for this suspension.

1.19 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 management company 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.

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2. GOVERNING BODY OF THE SCHEME

2.01 The governing body¹ 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 AIFM and the depository. 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

¹ which includes the board of directors, trustee, or general partners where applicable

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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 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

➤ Manager

- 3.01 The scheme may appoint a Maltese or European management company with responsibility for the discretionary investment management of its assets.
- 3.02 A Maltese management company shall have an established place of business in Malta and shall qualify as such pursuant to the provisions of the Act and the Investment Services Act (UCITS Management Company Passport) Regulations. It shall have sufficient financial resources and liquidity at its disposal to enable it to conduct its business effectively and to meet its liabilities. The management company shall also have the business 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.
- 3.03 A scheme may appoint a European management company in accordance with the Investment Services Act (UCITS Management Company Passport) Regulations. A European management company may seek to establish a branch in Malta or provide services in Malta in terms of regulations 9 and 10 respectively of the said regulations.
- 3.04 The MFSA shall be entitled to be satisfied, on a continuing basis that the manager of the scheme has the appropriate expertise and experience to carry out its functions.
- 3.05 The appointment and/or the replacement of any party who is to be the manager of the scheme, the terms of that appointment, and the contents of the agreement to which the appointment is subject, shall be agreed in advance with the MFSA. The MFSA shall have the right to require the replacement of the manager of the scheme.
- 3.06 The scheme shall ensure that where the manager wishes to delegate to third parties, for the purpose of a more efficient conduct of its business, the carrying out on its behalf of one or more of its own functions, the relevant provisions of Part BII of the Investment Services Rules for Investment Services Providers, dealing with outsourcing, shall apply, subject to the following additional requirements:
- the manager is to obtain the MFSA's prior consent to the outsourcing or delegation of any of its functions following submission of appropriate details as may be required by the MFSA;
 - the mandate shall not prevent the effectiveness of the supervision over the manager and in particular it shall not prevent the manager from acting, or the scheme from being managed, in the best interests of investors;
 - when the delegation concerns the investment management, the mandate shall only be given to undertakings which are authorised or licensed for the purpose of asset management and subject to prudential supervision, and such delegation

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- shall be in accordance with the investment-allocation criteria periodically laid down by the manager;
- iv. where the delegation concerns the investment management and is given to a third country undertaking, co-operation between the MFSA and the supervisory authority in that third country shall be ensured;
 - v. a mandate with regard to the core function of investment management shall not be given to the depository or to any undertaking whose interests may conflict with those of the manager or the unit-holders;
 - vi. measures shall exist which enable the persons who conduct the business of the manager to monitor effectively at any time the activity of the undertaking to which the mandate is given;
 - vii. the mandate shall not prevent the persons who conduct the business of the manager from giving further instructions to the undertaking to which functions are delegated and from withdrawing the mandate with immediate effect when this is in the interest of investors;
 - viii. having regard to the nature of the functions to be delegated, the undertaking to which functions will be delegated shall be qualified and capable of performing the functions in question; and
 - ix. the scheme's prospectus shall list the functions which the manager has been permitted to delegate as provided hereunder in the Investment Services Rules.

In no case shall the manager delegate any functions to third parties to the extent that it becomes a "letter box/ brass plate" entity.

➤ Administrator

- 3.07 The scheme in the case of a self-managed Maltese scheme or the manager on behalf of the scheme may appoint an administrator. Where an administrator is not appointed, the manager shall be responsible for the administration function.
- 3.08 Where an administrator is appointed, the scheme or the manager on behalf of the scheme shall submit to the MFSA the details thereof in an appropriate manner. Furthermore, the mandate shall not prevent the effectiveness of supervision over the manager or the scheme in the case of a self-managed scheme.
- 3.09 The administrator shall have the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to act as administrator of the scheme. The scheme or the manager on behalf of the scheme shall satisfy the MFSA that the proposed administrator meets the above requirements.
- 3.10 The MFSA shall be entitled to be satisfied, on a continuing basis that the administrator of the scheme has the appropriate expertise and experience to carry out its functions.

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3.11 Where the proposed fund administrator is established in Malta, it should be in possession of a Fund Administration Recognition Certificate issued in terms of Article 9A of the Act.

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➤ Investment adviser

3.12 The scheme or the manager on behalf of the scheme may appoint an investment adviser.

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3.13 The investment adviser shall have sufficient financial resources and liquidity at its disposal to enable it to conduct its business effectively and to meet its liabilities. The investment adviser shall also have the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to act as investment adviser. The scheme shall be required to satisfy the MFSA that the proposed investment adviser meets the above requirements.

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3.14 The MFSA shall be satisfied, on a continuing basis, that the investment adviser has the appropriate expertise and experience to carry out its functions.

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3.15 The appointment and/or the replacement of any party who is to be the investment adviser of the scheme, the terms of that appointment, and the contents of the agreement to which the appointment is subject, shall be agreed in advance with the MFSA. The MFSA shall have the right to require the replacement of the investment adviser of the scheme.

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➤ Depositary

3.16 The custodian shall ensure compliance with the provisions of the Investment Services Act (Custodians of Collective Investment Schemes) Regulations applicable to depositaries of UCITS.

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3.17 The custodian shall have sufficient financial resources and liquidity at its disposal to enable it to conduct its business effectively and to meet its liabilities. The custodian shall also have the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to act as custodian. The scheme shall be required to satisfy the MFSA that the proposed custodian meets the above requirements.

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3.18 The MFSA shall be entitled to be satisfied, on a continuing basis that the custodian has the appropriate expertise and experience to carry out its functions.

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3.19 The custodian 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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Auditor

3.20 The ~~s~~cheme shall appoint an auditor approved by the MFSA. ~~The MFSA's consent shall be sought prior to the appointment or replacement of an auditor. The scheme~~ shall replace its auditor if requested to do so by the MFSA.

3.21 The MFSA shall be entitled to be satisfied, on a continuing basis that the auditor of the ~~s~~cheme has the appropriate expertise and experience to carry out its functions.

3.22 The ~~s~~cheme 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.

3.23 The ~~s~~cheme shall not appoint an individual as an auditor, nor appoint an audit firm where the individual is directly responsible for the audit, or his/ her firm is:

- a director, partner, qualifying shareholder, officer, representative or employee of the scheme;
- a partner of, or in the employment of any person ~~referred to in paragraph (i) above;~~
- ~~iii.~~ a spouse, parent, step-parent, child, step-child, or other close relative of any person ~~referred to in paragraph (i) above;~~
- a person who is not otherwise independent of the scheme; or
- a person disqualified by the MFSA from acting as an auditor of the scheme.

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

3.24 The ~~s~~cheme 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. ~~It~~ shall confirm in writing to its auditor its agreement to the terms in the letter of engagement.

3.25 The letter of engagement shall include terms requiring the auditor:

- to provide such information or verification to the MFSA as the MFSA may request;
- to afford another auditor all assistance as he/ she may require;
- to vacate his/ her office if he/ she becomes disqualified to act as auditor for any reason;
- to advise the MFSA of the fact and of the reasons for his/ her ceasing to hold office, if he/ she resigns, or is removed or not reappointed. ~~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;~~

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(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:

- 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; or
- gravely impairs the scheme's ability to continue as a going concern; or
- relates to any other matter which has been prescribed.

3.26 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.

3.27 In respect of each annual accounting period, the scheme shall require its auditor to include an audit report in its annual report. The scheme shall notify the MFSA immediately if it is informed that its auditor intends to qualify the audit report.

3.28 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 the MFSA.

➤ Compliance officer

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

3.30 The Scheme shall at all times have a compliance officer.

3.31 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.

3.32 The "compliance report" should indicate any:

- i. breaches to the investment and borrowing restrictions;
- ii. breaches to the Rules included in this Part of the Rulebook and the applicable Appendices;
- iii. complaints from unit-holders in the scheme and the manner in which these have been handled in accordance with Appendix X;
- iv. material valuation errors (higher than 0.5 per cent of NAV) and the manner in which these have been handled; and
- v. material compliance issues during the period covered by the compliance report.

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- 3.33 The “compliance report” shall 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.
- 3.34 A copy of the “compliance report” shall be held in Malta at the registered office of the scheme and shall be made available to the MFSA during compliance visits.
- ***Money laundering reporting officer (“MLRO”)***
- 3.35 Responsibility for the scheme’s compliance with its prevention of money laundering obligations rests with the governing body of the scheme.
- 3.36 The scheme shall at all times have an MLRO.

4. VALUATION OF ASSETS AND ISSUE OF UNITS

4.01 The method of valuation of the assets of the ~~scheme~~ as well as the method for calculating the sale or issue price and the repurchase and redemption price of the units of a ~~scheme~~ shall be approved by the MFSA and shall be laid down in the ~~scheme's~~ instruments of incorporation and ~~prospectus~~.

4.02 A ~~scheme~~ shall not issue a unit unless the equivalent net issue price is paid into ~~its~~ assets ~~within the usual time limits~~:

Provided that this shall not preclude the distribution of bonus units.

4.03 If the stock exchange value of the units or shares of a ~~scheme~~ set up as an ETF significantly varies from its net asset value, investors who have acquired their units or shares (or, where applicable, any right to acquire a unit or share that was granted by way of distributing a respective unit or share) on the secondary market shall be allowed to sell them directly back to the ETF. For example, this may apply in cases of market disruption such as the absence of a market maker. In such situations, information shall be communicated to the regulated market indicating that the ETF is open for direct redemptions at the level of the ETF.

Additional Rules applicable to acquisitions in specie

4.04 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.

4.05 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.

4.06 The report drawn up in accordance with Rule 4.05 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.

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4.07 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.

4.08 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.

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5. PERMISSIBLE INVESTMENT INSTRUMENTS

5.01 The scheme's investments shall consist solely of any or all of the following:

- i. transferable securities and money market instruments admitted to or dealt in on a regulated market within the meaning of article 4(1) of the Markets in Financial Instruments Directive²; and/or
- ii. transferable securities and money market instruments dealt in on another regulated market in a Member State which operates regularly and is recognized and open to the public; and/or
- iii. transferable securities and money market instruments admitted to official listing on a stock exchange in a non-Member State or dealt in on another regulated market in a non-Member State which operates regularly and is recognized and open to the public provided that the choice of stock exchange or market has been approved by the MFSA or is provided for in the prospectus or the instruments of incorporation of the scheme; and/or
- iv. recently issued transferable securities provided that:
 - a. the terms of issue include an undertaking that application will be made for admission to official listing on a stock exchange or to another regulated market which operates regularly and is recognized and open to the public, provided that the choice of stock exchange or market has been approved by the MFSA or is provided for in the prospectus or the instruments of incorporation of the scheme;
 - b. such admission is secured within a year of issue; and/or
- v. units of other UCITS schemes authorised in terms of the UCITS Directive or other collective investment schemes falling within the definition of a UCITS scheme, should they be situated in a Member State or not provided that:
 - a. such other collective investment schemes are authorised under laws which provide that they are subject to supervision considered by MFSA to be equivalent to that laid down in Community law, and that co-operation between authorities is sufficiently ensured;
 - b. the level of protection for unit-holders in such other collective investment schemes is equivalent to that provided for unit-holders in a UCITS scheme, and in particular that the rules on assets segregation, borrowing, lending and uncovered sales of transferable securities and money market instruments are equivalent to the requirements of the UCITS Directive;

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² Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments

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- c. the business of the other collective investment schemes is reported in half-yearly and annual reports to enable investors to assess the assets and liabilities, income and operations over the reporting period;
- d. no more than 10 per cent of the assets of the UCITS schemes or of the other collective investment schemes whose acquisition is contemplated, can, according to their prospectus or instruments of incorporation, be invested in aggregate in units of other UCITS schemes or other collective investment schemes; and/or
- vi. deposits with credit institutions which are repayable on demand or have the right to be withdrawn, and maturing in no more than 12 months, provided that the credit institution has its registered office in a Member State or, if the registered office of the credit institution is situated in a non-Member State, provided that it is subject to prudential rules considered by MFS A as equivalent to those laid down in Community Law; and/or
- vii. financial derivative instruments, including equivalent cash-settled instruments, dealt in on a regulated market referred to in paragraphs (i), (ii) and (iii) above; and/or financial derivative instruments dealt in over-the-counter ("OTC-derivatives") provided that:
 - a. the underlying consists of instruments covered by this Rule, financial indices, interest rates, foreign exchange rates or currencies, in which the scheme may invest according to its investment objectives as stated in its prospectus or instruments of incorporation;
 - b. the counterparties to OTC-derivative transactions are institutions subject to prudential supervision, and belonging to the categories approved by the MFS A according to the criteria set out in Rule 6.23; and
 - c. the OTC-derivatives are subject to reliable and verifiable valuation on a daily basis and can be sold, liquidated or closed by an offsetting transaction at any time at their fair value at the scheme's initiative; and/or
- viii. money market instruments, other than those dealt in on a regulated market, if the issuer or issuer of such instruments is itself regulated for the purpose of protecting investors and savings, and provided that they are:
 - a. issued or guaranteed by a central, regional or local authority or central bank of a Member State, the European Central Bank, the European Union or the European Investment Bank, a non-Member State or, in the case of a Federal State, by one of the members making up the federation, or by a public international body to which one or more Member States belong; or
 - b. issued by an undertaking any securities of which are dealt on regulated markets referred to in paragraphs (i), (ii) or (iii) above; or
 - c. issued or guaranteed by an establishment subject to prudential supervision, in accordance with criteria defined by Community law, or by an establishment which is subject to and complies with prudential

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rules considered by the MFSA to be at least as stringent as those laid down by Community law; or

- d. issued by other bodies falling within the categories which the MFSA may from time to time prescribe, provided that investments in such instruments are subject to investor protection equivalent to that laid down in paragraphs (a), (b) or (c) above and provided that the issuer:
- is a company whose capital and reserves amount to at least EUR 10 million and which presents and publishes its annual accounts in accordance with Directive 78/660/EEC;
 - is an entity, within a group of companies, which includes one or several listed companies, is dedicated to the financing of the group; or
 - is an entity which is dedicated to the financing of securitisation vehicles which benefit from a banking liquidity line.

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- 5.02 Where the ~~scheme~~ is ~~established~~ as an investment company or a limited partnership, it may acquire movable or immovable property which is essential for the direct pursuit of its business.

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- 5.03 The ~~scheme~~ may not acquire precious metals or certificates representing them.

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➤ Transferable ~~securities~~

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- 5.04 The ~~scheme~~ or ~~the manager~~ on behalf of the ~~scheme~~ shall ensure that the ~~transferable securities~~ referred to in ~~Rule 5.01~~(i) to (iv) and ~~Rule 6.05~~ satisfy the following criteria:

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- i. the potential loss which the ~~scheme~~ may incur with respect to holding these instruments is limited to the amount paid for them;
- ii. their liquidity does not compromise the ability of the ~~scheme~~ to comply with ~~Rule 10.06~~;
- iii. reliable valuation is available for them as follows:
- a. in the case of securities admitted to or dealt in on a regulated market as referred to in ~~Rule 5.01~~ (i) to (iv), in the form of accurate, reliable and regular prices which are either market prices or prices made available by valuation systems independent from issuers;
 - b. in the case of other securities as referred to in ~~Rule 6.05~~, in the form of a valuation on a periodic basis which is derived from information from the issuer of the security or from competent investment research;
- iv. appropriate information is available for them as follows:
- a. in the case of securities admitted to or dealt in on a regulated market as referred to in ~~Rule 5.01~~(i) to (iv), in the form of regular, accurate and

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comprehensive information to the market on the security or, where relevant, on the portfolio of the security;

- b. in the case of other securities as referred to in Rule 6.05, in the form of regular and accurate information to the scheme or its manager on the security or, where relevant, on the portfolio of the security;

- v. they are negotiable;

- vi. their acquisition is consistent with the investment objectives or the investment policies, or both, of the scheme pursuant to the UCITS Directive;

- vii. their risks are adequately captured by the risk management process of the scheme or its manager.

For the purposes of paragraphs (ii) and (v) above, and unless there is information available to the scheme or its manager that would lead to a different determination, financial instruments which are admitted or dealt in on a regulated market in accordance with Rule 5.01 (i) to (iii) shall be presumed not to compromise the ability of the scheme or its manager to comply with Rule 10.06 and shall also be presumed to be negotiable.

When a transferable security covered by paragraph (iii) in the definition of this term in the Glossary to these Rules, contains an embedded derivative component as referred to in Rule 6.22, the requirements of Rules 6.18, 6.19, 6.22 and 6.26 to 6.33 shall apply to that component.

➤ Money market instruments

5.05 The scheme or the manager on behalf of the scheme shall ensure that the money market instruments referred to in Rule 5.01(viii) satisfy the following criteria:

- i. they fulfil one of the following criteria:

- a. they have a maturity at issuance of up to and including 397 days; or
- b. they have a residual maturity of up to and including 397 days; or
- c. they undergo regular yield adjustments in line with money market conditions at least every 397 days; or
- d. their risk profile, including credit and interest rate risks, corresponds to that of financial instruments which have a maturity as referred to in paragraphs (a) or (b), or are subject to a yield adjustment as referred to in paragraph (c).

- ii. they fulfil the following criteria:

- a. they can be sold at limited cost in an adequately short time frame, taking into account the obligation of the scheme to repurchase or redeem its units at the request of any unit-holder; and

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b. they qualify as financial instruments for which accurate and reliable valuations systems, which fulfil the following criteria, are available:

- they enable the ~~scheme or the manager or the administrator on behalf of the scheme~~ to calculate a net asset value in accordance with the value at which the financial instrument held in the portfolio could be exchanged between knowledgeable willing parties in an arm's length transaction; and
- they are based either on market data or on valuation models including systems based on amortised costs.

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iii. appropriate information is available for them, including information which allows an appropriate assessment of the credit risks related to the investment in such instruments; and

iv. they are freely transferable.

5.06 For ~~money market instruments~~ referred to in ~~Rule 5.01(viii)(b) and (d) and money market instruments~~ issued by a local or regional authority of a Member State or by a public international body but ~~which are not guaranteed by a Member State or, in the case of a federal State which is a Member State, by one of the members making up the federation, “appropriate information” as referred to in Rule 5.05(iii) shall consist in the following:~~

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i. information on both the issue or the issuance programme and the legal and financial situation of the issuer prior to the issue of the ~~money market instrument~~;

ii. updates of the information referred to in ~~paragraph (i) above~~ on a regular basis and whenever a significant event occurs;

iii. the information referred to in ~~paragraph (i) above~~, verified by appropriately qualified third parties not subject to instructions from the issuer; and

iv. available and reliable statistics on the issue or the issuance programme.

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5.07 For ~~money market instruments~~ covered by ~~Rule 5.01(viii)(c)~~, “appropriate information” as referred to in ~~Rule 5.05(iii) shall consist in the following:~~

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i. information on the issue or issuance programme or on the legal and financial situation of the issuer prior to the issue of the ~~money market instrument~~;

ii. updates of the information referred to in ~~paragraph (i) above~~ on a regular basis and whenever a significant event occurs; and

iii. available and reliable statistics on the issue or issuance programme or other data enabling an appropriate assessment of the credit risks related to the investment in such instruments.

5.08 For all ~~money market instruments~~ covered by ~~Rule 5.01(viii)(a)~~ except those referred to in ~~Rule 5.06~~, and those issued by the European Central Bank or by a central bank from a Member State, “appropriate information” as referred to in ~~Rule 5.05(iii) shall~~

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consist in information on the issue or the issuance programme or on the legal and financial situation of the issuer prior to the issue of the money market instrument.

5.09 The reference in Rule 5.01(viii)(c) to “an establishment which is subject to and complies with prudential rules considered by the MFSA to be at least as stringent as those laid down by Community law” shall be understood as a reference to an issuer which is subject to and complies with prudential rules and fulfils one of the following criteria:

- it is located in the European Economic Area;
- it is located in the OECD countries belonging to the Group of Ten;
- it has at least investment grade rating; and
- it can be demonstrated on the basis of an in-depth analysis of the issuer that the prudential rules applicable to that issuer are at least as stringent as those laid down by Community law.

5.10 The reference in Rule 5.01(viii)(d) to:

- “securitisation vehicles” shall be understood as a referring to structures, whether in the corporate, trust or contractual form, set up for the purpose of securitisation operations; and
- “banking liquidity lines” shall be understood as a referring to banking facilities secured by a financial institution which itself complies with Rule 5.01(viii)(c).

➤ Financial derivative instruments

5.11 The reference to “liquid financial assets” in regulation 3(2)(a) of the Investment Services Act (Marketing of UCITS) Regulations, shall, with respect to financial derivative instruments, be understood as referring to financial derivative instruments which fulfil the following criteria:

- their underlyings consist of one or more of the following:
 - assets listed in Rule 5.01 including financial instruments having one or several characteristics of those assets;
 - interest rates;
 - foreign exchange rates or currencies;
 - financial indices.
- in the case of OTC-derivatives, they comply with the conditions set out in Rule 5.01(vii)(b) and (c).

The reference to “liquid financial assets” in this regulation, shall however exclude derivatives on commodities.

5.12 Financial derivative instruments as referred to in Rule 5.01(vii) shall be taken to include instruments which fulfil the following criteria:

- they allow the transfer of credit risk of an asset referred to in Rule 5.11(i) independently from the other risks associated with that asset;

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- ii. they do not result in the delivery or in the transfer, including in the form of cash, of assets other than those referred to in Rules 5.01 and 6.05;
- iii. they comply with the criteria for OTC-derivatives laid down in Rule 5.01(vii)(b) and (c) and in Rule 5.13; and
- iv. their risks are adequately captured by the risk management process of the scheme or its manager, and by its internal control mechanisms in the case of risks of asymmetry of information between the scheme or its manager and the counterparty to the credit derivative resulting from potential access of the counterparty to non-public information on firms the assets of which are used as underlying by credit derivatives.

5.13 For the purposes of the Rule 5.01(vii)(c), the reference to:

- i. “fair value” shall be understood as referring to the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm's length transaction.
- ii. “reliable and verifiable valuation” shall be understood as referring to a valuation, by the scheme or its manager, corresponding to the fair value as referred to in paragraph (i) above which does not only rely on market quotations by the counterparty and which fulfils the following criteria:
 - a. the basis for the valuation is either a reliable up-to-date market value of the instrument, or, if such a value is not available, a pricing model using an adequate recognised methodology;
 - b. verification of the valuation is carried out by one of the following:
 - an appropriate third party which is independent from the counterparty of the OTC-derivative, at an adequate frequency and in such a way that the scheme or its manager is able to check it;
 - a unit within the scheme or its manager which is independent from the department in charge of managing the assets and which is adequately equipped for such purpose.

5.14 The reference in Rule 5.01(vii) to “financial indices” shall be understood as referring to indices which fulfil the following criteria:

- i. they are sufficiently diversified, in that the following criteria are fulfilled:
 - a. the index is composed in such a way that price movements or trading activities regarding one component do not unduly influence the performance of the whole index;
 - b. where the index is composed of assets referred to in Rule 5.01, its composition is at least diversified in accordance with Rule 6.37;
 - c. where the index is composed of assets other than those referred to in Rule 5.01, it is diversified in a way which is equivalent to that provided for in Rule 6.37;

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- ii. they represent an adequate benchmark for the market to which they refer, in that the following criteria are fulfilled:
 - a. the index measures the performance of a representative group of underlyings in a relevant and appropriate way;
 - b. the index is revised or rebalanced periodically to ensure that it continues to reflect the markets to which it refers following criteria which are publicly available;
 - c. the underlyings are sufficiently liquid which allows users to replicate the index, if necessary;
- iii. they are published in an appropriate manner, in that the following criteria are fulfilled:
 - a. their publication process relies on sound procedures to collect prices and to calculate and to subsequently publish the index value, including pricing procedures for components where a market price is not available;
 - b. material information on matters such as index calculation, rebalancing methodologies, index changes or any operational difficulties in providing timely or accurate information is provided on a wide and timely basis.

5.15 Where the composition of assets which are used as underlyings by financial derivative instruments in accordance with Rule 5.01 does not fulfil the criteria set out in Rule 5.14, those financial derivative instruments shall, where they comply with the criteria set out in Rule 5.11, be regarded as financial derivative instruments on a combination of the assets referred to in Rule 5.11(i)(a), (b) and (c).

5.16 A hedge fund index qualifies as a financial index in terms of Rule 5.01(vii)(a) if it complies with the conditions laid down in Rule 5.14 and if the methodology of the index provides for the selection and the re-balancing of components on the basis of pre-determined rules and objective criteria.

5.17 Notwithstanding anything contained in Rule 5.16, a hedge fund index does not qualify as a financial index in terms of Rule 5.01(vii)(a) if:

- i. the index provider accepts payments from potential index components for the purpose of being included in the index; or
- ii. the methodology of the index allows retrospective changes to previously published index values ("backfilling").

5.18 When gaining exposure to a hedge fund index by means of an OTC derivative, the scheme shall carry out appropriate due diligence in order to assess the "quality" of the index. In assessing the quality of the index, the scheme shall take into account at least the following factors. The scheme must keep a record of its assessment including:

- i. the comprehensiveness of the index methodology, including:

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- a. whether the methodology contains an adequate explanation of subjects such as the weighting and classification of components³, and the treatment of defunct components; and

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- b. whether the index represents an adequate benchmark for the kind of hedge funds to which it refers;

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- ii. the availability of information about the index, including:

- a. whether there is a clear narrative description of what the index is trying to represent;

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- b. whether the index is subject to an independent audit and the scope of the audit (e.g. that the index methodology has been followed, that the index has been calculated correctly); and

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- c. how frequently the index is published and whether this will affect the ability of the scheme to accurately calculate its net asset value ('NAV');

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- iii. matters relating to the treatment of index components, including:

- a. the procedures by which the index provider carries out any due diligence on the NAV calculation procedures of index components;

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- b. what level of detail about the index components and their NAVs are made available (including whether they are investable or non-investable); and

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- c. whether the number of components in the index achieves sufficient diversification.

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Records evidencing compliance with this requirement shall be held at the registered office of the scheme and should be made available to the MFSA during compliance visits.

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6. INVESTMENT OBJECTIVES, POLICIES AND RESTRICTIONS

6.01 The scheme shall observe its investment objectives, policies and restrictions.

➤ Breaches of investment restrictions

6.02 The following shall be the rules applicable in the event of inadvertent breach of the scheme's 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 manager or the scheme or as a result of subscription rights, the manager or the scheme shall 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 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 scheme to comply with its investment restrictions and to ensure that such restrictions are not contravened as a direct result of any acquisition of its underlying assets.

- ii. Forthwith as soon as the custodian becoming aware that circumstances of a kind described above have arisen, it shall take such steps as are necessary to ensure that the scheme or manager comply with the requirement imposed by paragraph (i) above.

- iii. A contravention of an investment restriction which may arise due to the circumstances outlined in paragraph (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 manager or scheme within the maximum six month period stipulated in paragraph (i) above, a breach of this licence condition is deemed to arise and the relevant notification requirements will apply.

➤ Disclosure in prospectus

6.03 The scheme's investment policies shall be clearly defined in its prospectus, and sufficient information shall be given to ensure that the unit-holders are fully aware of the risks to which they will be exposed.

➤ Ancillary liquid cash

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6.04 The scheme may hold ancillary liquid assets irrespective of its investment objective and policy.

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➤ ***Investments in transferable securities and money market instruments***

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6.05 The scheme may not invest more than 10 per cent of its assets in transferable securities and money market instruments other than those referred to in Rule 5.01 above.

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6.06 The scheme shall not invest more than 5 per cent of its assets in transferable securities or money market instruments issued by the same body.

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6.07 The limit of 5 per cent in Rule 6.06 may be raised to a maximum of 10 per cent of the scheme's assets:

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Provided that the total value of securities held in bodies in which it invests more than 5 per cent, is less than 40 per cent. This limitation does not apply to deposits and OTC-derivative transactions made with financial institutions subject to prudential supervision.

6.08 For the purposes of determining the 40 per cent limit indicated in Rule 6.07, the transferable securities and money market instruments referred to in Rules 6.09 and 6.10 below shall not be taken into account.

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6.09 The limit of 5 per cent in Rule 6.06 may be raised to a maximum of 35 per cent if the transferable securities or money market instruments are issued or guaranteed by a Member State, or by its local authorities, by a non-Member State or by public international bodies to which one or more Member States belong:

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Provided that this limit may be waived in accordance with Rule 6.11.

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6.10 The 5 per cent limit in Rule 6.06 may be raised to a maximum of 25 per cent in the case of certain bonds when these are issued by a credit institution which has its registered office in a Member State and is subject by law to special public supervision designed to protect bond-holders.

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In particular, sums deriving from the issue of these bonds shall be invested in conformity with the law in assets which, during the whole period of validity of the bonds, are capable of covering claims attaching to the bonds and which, in the event of failure of the issuer, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest:

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Provided that when the scheme invests more than 5 per cent of its assets in the bonds referred to above and issued by one issuer, the total value of these bonds may not exceed 80 per cent of the value of the assets of the scheme.

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MFSA

MALTA FINANCIAL SERVICES AUTHORITY

6.11 By way of derogation from Rules 6.06 to 6.10 and Rules 6.35 and 6.36, the MFSA may authorize the scheme to invest in accordance with the principle of risk-spreading up to 100 per cent of its assets in different transferable securities or money market instruments issued or guaranteed by any Member State, its local authorities, a non-Member State or public international bodies of which one or more Member States are members, provided it is satisfied that unit-holders in the scheme have protection equivalent to that of unit-holders in a scheme complying with the limits laid down in Rules 6.06 to 6.10, 6.35 and 6.36. The following conditions shall apply:

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- the scheme shall hold securities from at least six different issues, but securities from any one issue may not account for more than 30 per cent of its total assets;
- the scheme shall disclose in its prospectus the names of the States, local authorities or public international bodies issuing or guaranteeing securities in which they intend to invest more than 35 per cent of their assets; and
- the scheme's prospectus and any promotional material shall include a prominent statement drawing attention to such authorization and indicating the States, local authorities and/ or public international bodies in the securities of which it intends to invest or has invested more than 35 per cent of its assets.

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➤ Deposits with credit institutions

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6.12 Not more than 20 per cent of the assets of the scheme shall be kept on deposit with any one body.

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➤ Transactions in financial derivative instruments – for investment and/or efficient portfolio management purposes

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6.13 The scheme may transact in financial derivative instruments as long as:

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- the transaction involves financial derivative instruments of the kind specified in Rule 5.01(vii);
- the transaction in the financial derivative instrument does not cause the scheme to diverge from its investment objectives as laid down in the instruments of incorporation and/or prospectus.

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6.14 The scheme's maximum exposure to one counterparty in an OTC-derivative transaction shall not be more than 5 per cent of the value of the assets of the scheme.

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This limit may be increased to 10 per cent in respect of OTC-derivative transactions made with a counterparty which is a credit institution as described in Rule 5.01(vi). The exposure per counterparty of an OTC-derivative should not be measured on the basis of the notional value of the OTC-derivative, but on the maximum potential loss incurred by the scheme if the counterparty defaults.

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MALTA FINANCIAL SERVICES AUTHORITY

6.15 The exposure to one counterparty in an OTC-derivative transaction may be reduced where the counterparty provides the ~~s~~cheme with collateral which satisfies ~~the~~ **criteria** listed in ~~s~~ection 9 of Appendix VI⁴ to these Rules.

6.16 The ~~s~~cheme may net the mark-to-market value of its OTC-derivative positions with the same counterparty, thus reducing ~~the~~ exposure to its counterparty.

~~P~~rovided that the ~~s~~cheme ~~shall have~~ a contractual netting agreement with its counterparty which creates a single legal obligation such that, in the event of the counterparty's failure to perform owing to default, bankruptcy, liquidation or any other similar circumstance, ~~it~~ would have a claim to receive or an obligation to pay only the net sum of the positive and negative mark-to-market values of included individual transactions.

6.17 Derivative transactions which are performed on an exchange where the clearinghouse meets the following conditions shall be deemed to be free of counterparty risk:

- i. is backed by an appropriate performance guarantee;
- ii. is characterised by a daily mark-to-market valuation of the derivative positions; and
- iii. is subject to at least daily margining.

6.18 The scheme may employ techniques and instruments for the purpose of efficient portfolio management which include the use of transferable securities and money market instruments. These operations may concern the use of financial derivative instruments.

The reference in this Rule to techniques and instruments which relate to transferable securities and which are used for the purpose of efficient portfolio management shall be understood as a reference to techniques and instruments which fulfil the following criteria:

- i. they are economically appropriate in that they are realised in a cost-effective way;
- ii. they are entered into for one or more of the following specific aims:
 - a. reduction of risk; or
 - b. reduction of cost; or
 - c. generation of additional capital or income for the Scheme with a level of risk which is consistent with the risk profile of the Scheme and the risk diversification rules laid down in Rules 6.06 to 6.10, 6.12, 6.14, 6.35 and 6.36; and
- iii. their risks are adequately captured by the risk management process of the scheme or its manager.

⁴ Additional Rules on Risk Management, Counterparty Risk Exposure and Issuer Concentration applicable to Maltese Retail Collective Investment Schemes set up as Maltese UCITS Schemes.

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Techniques and instruments which comply with the criteria set out in the second paragraph of this Rule and which relate to money market instruments shall be regarded as techniques and instruments relating to money market instruments for the purpose of efficient portfolio management.

- 6.19 The scheme shall ensure that its global exposure relating to financial derivative instruments does not exceed the total net value of its portfolio. The exposure is calculated taking into account:
- i. the current value of the underlying asset;
 - ii. the counterparty risk;
 - iii. future market movements; and
 - iv. the time available to liquidate positions.

The scheme's overall risk exposure may not exceed 200 per cent of its NAV on a permanent basis.

The scheme's total/ global exposure relating to financial derivative instruments should be assessed in line with the requirements included in Appendix VI to these Rules.

- 6.20 Where the scheme invests in financial derivative instruments as part of its investment policies and within the limits established by Rule 6.36, the exposure to the underlying assets shall not exceed in aggregate the limits in Rules 6.06 to 6.10, 6.12, 6.14, 6.35 and 6.36. The exposure to the underlying assets should be calculated using the Commitment Approach as indicated in Appendix VI to these Rules.
- 6.21 Subject to the MFSA's approval, where the scheme invests in an index based financial derivative instrument, provided the relevant index meets the criteria in Rules 5.14 and 6.37 for approval of indices by the MFSA, these investments do not have to be combined to the limits laid down in Rules 5.06 to 6.10, 6.12, 6.14, 6.35 and 6.36.
- 6.22 Where a transferable security or money market instrument embeds a financial derivative instrument, this derivative transaction shall be taken into account for the purposes of complying with the limits in Rules 6.13 and 6.18 to 6.21.

The exposure to the underlying assets should be calculated using the Commitment Approach as indicated in Appendix VI to these Rules.

In cases where the Commitment Approach is not relevant or technically impossible, due to the complexity of the concerned financial derivative instrument, the scheme may use an approach based on the maximum potential loss linked to that financial derivative instrument.

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The reference in this Rule to transferable securities embedding a financial derivative instrument shall be understood as being a reference to financial instruments which fulfil the criteria set out in Rule 5.04 and which contain a component which fulfils the following criteria:

- i. by virtue of that component some or all of the cash flows that otherwise would be required by the transferable security which functions as host contract can be modified according to a specified interest rate, financial instrument price, foreign exchange rate, index of prices or rates, credit rating or credit index, or other variable, and therefore vary in a way similar to a stand-alone financial derivative instrument;
- ii. its economic characteristics and risks are not closely related to the economic characteristics and risks of the host contract; and
- iii. it has a significant impact on the risk profile and pricing of the transferable security.

Money market instruments which fulfil one of the criteria set out in Rule 5.05(i) and all the criteria set out in Rule 5.05(ii) and which contain a component which fulfils the criteria set out in the fourth paragraph of this Rule shall be regarded as money market instruments embedding a financial derivative instrument.

A transferable security or a money market instrument shall not be regarded as embedding a financial derivative instrument where it contains a component which is contractually transferable independently of the transferable security or the money market instrument. Such a component shall be deemed to be a separate financial instrument.

6.23 The scheme shall only enter into transactions for direct investment in financial derivative instruments or for efficient portfolio management/ hedging by means of financial derivative instruments with counterparties who:

- i. are not the manager or depository of the scheme; and
- ii. form part of a group whose head office or parent company is licensed, registered or based in Malta, any member of the OECD, the EU or the EEA and is subject to prudential supervision in accordance with provisions equivalent to Directive 2013/36/EU⁵; and
- iii. have a credit rating of at least A (Standards & Poor's) or A2 (Moody's) or such other rating acceptable to MFSA.

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In the case of OTC transactions, such counterparty shall satisfy the manager or the scheme that it has:

- agreed to value the transaction at least weekly; and
- will close out the transaction at the request of the manager or the scheme at fair value.

⁵ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms.

- 6.24 When the scheme holds a financial derivative instrument which automatically or at the scheme's discretion, requires cash settlement on maturity or exercise, the scheme does not necessarily have to hold the underlying instrument as cover. In such case, the following categories may be acceptable as cover:
- i. cash;
 - ii. liquid debt instruments⁶ prudently adjusted by appropriate haircuts⁷; and
 - iii. other highly liquid assets which are correlated with the underlying of the financial derivative instruments, prudently adjusted by appropriate haircuts (minimum 5 per cent).

The level of cover should be calculated using the Commitment Approach as indicated in Appendix VI to these Rules. The assets held for cover should consist solely of instruments listed in Rule 5.01 and should be compliant with the investment policies of the scheme.

For the purposes of this Rule, the instruments held as cover should be considered as 'liquid' when they can be converted into cash at no more than 7 business days at a price closely corresponding to the current valuation of the financial instrument. It has to be ensured that the respective cash amount is at the scheme's disposal at the maturity / expiry or exercise date of the financial derivative instrument.

- 6.25 When the scheme holds a financial derivative instrument which automatically or at the counterparty's discretion, requires the physical delivery of the underlying financial instrument, on maturity or exercise, the scheme has to hold the underlying instrument as cover at all times. However, the scheme may alternatively cover the exposure with sufficient liquid assets provided that the following requirements are satisfied:
- i. the risks of the underlying can be appropriately represented by another financial instrument; and/ or
 - ii. the underlying financial instrument is highly liquid; and/ or
 - iii. the liquid assets held as cover can be used at any time to purchase the underlying financial instrument to be delivered; and/ or
 - iv. the additional risks associated with the transaction referred to in paragraph (iii) above are adequately covered by the risk management process of the scheme or its manager.

The level of cover should be calculated using the Commitment Approach as indicated in Appendix VI to these Rules. The assets held for cover should consist solely of instruments listed in Rule 5.01 and should be compliant with the investment policies of the scheme.

⁶ (e.g. government bonds of first credit rating)

⁷ (minimum of 5 per cent)

For the purposes of this Rule, the instruments held as cover should be considered as 'liquid' when they can be converted into cash at no more than 7 business days at a price closely corresponding to the current valuation of the financial instrument. It has to be ensured that the respective cash about is at the scheme's disposal at the maturity/expiry or exercise date of the financial derivative instrument.

➤ ***Risk management process***

- 6.26 The scheme or its manager shall use a risk management process, which is adapted to the relevant risk-profile of the scheme, enabling it to monitor, and measure and manage at any time as frequently as appropriate, all material risks relating to the scheme's positions and their contribution to the overall risk profile of the scheme.

In particular, the scheme or its manager shall not solely or mechanistically rely on credit ratings issued by credit rating agencies as defined in article 3(1)(b) of Regulation (EC) No 1060/2009⁸, for assessing the creditworthiness of the scheme's assets. Upon request of an investor, the scheme or the manager on its behalf shall provide supplementary information relating to the quantitative limits that apply in the risk management of the scheme, the methods chosen to this end and to the recent evolution of the main instrument categories' risks and yields.

- 6.27 The following details of the risk management process shall be notified by the scheme or its manager to the MFSA in advance, along with any material alteration:
- i. the methods for estimating risks in derivative transactions; and
 - ii. the types of financial derivative instruments to be used within the scheme together with their underlying risks and any relevant quantitative limits.
- 6.28 The risk management process should take account of the investment objectives and policies of the scheme as stated in the most recent prospectus.
- 6.29 The risk management process and any material alteration should be agreed in advance with the depositary and the MFSA.
- 6.30 The scheme or its manager is expected to demonstrate more sophistication in its risk management process where the scheme has a complex risk profile than for one with a simple risk profile. In particular, the risk management process should take account of any characteristic of non-linear dependence in the value of a position to its underlying.
- 6.31 The scheme should take reasonable care to establish and maintain such systems and controls as are appropriate to its business.

⁸ Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies

6.32 The risk management process should enable the analysis required by Rule 6.26 to be undertaken at least daily or at each valuation point whichever is the more frequent.

6.33 The scheme or the manager on behalf of the scheme shall employ a process for accurate and independent assessment of the value of any OTC-derivative instruments which are made use of.

➤ ***Uncovered sales***

6.34 The scheme may not carry out uncovered sales of transferable securities, money market instruments or other financial instruments referred to in Rule 5.01(v), (vii) and (viii).

Uncovered sales are all transactions in which the scheme is exposed to the risk of having to buy securities at a higher price than the price at which the securities are delivered, thus making a loss, and the risk of not being able to deliver the underlying for settlement at the time of the maturity of the transaction.

➤ ***General restrictions – single issuer exposures***

6.35 Notwithstanding the individual limits laid down in Rules 6.06, 6.12, and 6.14, the scheme may not combine:

- i. investments in transferable securities or money market instruments issued by; and
- ii. deposits made with; and
- iii. counterparty exposures arising from OTC-derivative transactions undertaken with; and
- iv. other exposures arising from OTC-derivative transactions relating to; a single body in excess of 20 per cent of its assets.

6.36 The limits provided for in Rules 6.06, 6.07, 6.09, 6.10, 6.12, 6.14 and 6.35 may not be combined, and thus investments in transferable securities or money market instruments issued by the same body or in deposits or financial derivative instruments made with this body carried out in accordance with the above-mentioned Rules shall under no circumstances exceed in total 35 per cent of the assets of the scheme.

Companies which are included in the same group for the purposes of consolidated accounts as defined in the Seventh Council Directive of 13 June 1983 based on the Article 54(3)(g) of the Treaty on consolidated accounts⁹ in accordance with recognized international accounting rules, are regarded as a single body for the purpose of calculating the limits contained in Rules 6.06 to 6.10, 6.12, 6.14, 6.35 and 6.36.

⁹ Directive 83/349/EEC

Subject to the MFSA's approval, the scheme may effect a cumulative investment in transferable securities and money market instruments within the same group up to a limit of 20 per cent.

➤ ***Investments in shares and bonds for tracking an index***

6.37 Without prejudice to the limits laid down in Rules 6.44 to 6.46, the limits laid down in Rules 6.06 and 6.07 may be raised to a maximum of 20 per cent for investment in shares and/or debt securities issued by the same body, where the investment policy of the scheme as stated in the most recently published prospectus, is to replicate the composition of a certain stock or debt securities index which is recognised by the MFSA, on the following basis:

- i. its composition is sufficiently diversified in that it complies with the risk diversification rules in this Rule;
- ii. the index represents an adequate benchmark for the market to which it refers, in that the index provider uses a recognised methodology which generally does not result in the exclusion of a major issuer of the market to which it refers; and
- iii. it is published in an appropriate manner, in that the index fulfils the following criteria:
 - a. it is accessible to the public; and
 - b. the index provider is independent from the scheme.

Paragraph (b) above shall not preclude index providers and the scheme forming part of the same economic group, provided that effective arrangements for the management of conflicts of interest are in place.

Subject to the MFSA's approval, the above 20 per cent limit may be raised to a maximum of 35 per cent, where it proves to be justified by exceptional market conditions, in particular in regulated markets where certain transferable securities or money market instruments are highly dominant. The investment up to this limit is only permitted for a single issuer.

The reference in this Rule to the terms "*replicate the composition of a certain stock or debt securities index*" shall be understood referring to the replication of the composition of the underlying assets of an index, including the use of financial derivative instruments or other techniques and instruments as referred to in Rule 6.18.

➤ ***Investments in other UCITS and / or other collective investment schemes***

6.38 The scheme may acquire the units of a UCITS and/or other collective investment schemes referred to in Rule 5.01(v), provided that no more than 20 per cent of its assets are invested in units of a single UCITS or other collective investment scheme.

- 6.39 Investments made in units of collective investment schemes other than UCITS, may not exceed, in aggregate, 30 per cent of the assets of the scheme.
- 6.40 Subject to the MFSA's approval, when the scheme has acquired units of UCITS and/or other collective investment schemes, the assets of the respective UCITS or other collective investment schemes do not have to be combined for the purposes of the limits laid down in Rules 6.06 to 6.10, 6.12, 6.14, 6.35 and 6.36.
- 6.41 When the scheme invests in the units of another UCITS and/or other collective investment schemes that are managed, directly or by delegation, by the manager or by any other company with which the manager is linked by common management or control, or by a substantial direct or indirect holding, the manager or other company may not charge subscription or redemption fees on account of the scheme's investment in the units of such other UCITS and/or collective investment schemes.
- 6.42 Where a commission is received by the manager by virtue of an investment in the units of another scheme, that commission shall be paid into the property of the scheme.
- 6.43 Where the scheme invests a substantial proportion of its assets in other UCITS and/or collective investment schemes, it shall disclose in its prospectus the maximum level of the management fees that may be charged both to the scheme itself and to the other UCITS and/or collective investment schemes in which it intends to invest. In its annual report, it shall indicate the maximum proportion of management fees charged both to the scheme itself and to the UCITS and/or other collective investment scheme in which it invests.
- 6.44 The scheme or the manager on behalf of the scheme, taking into account all of the schemes which the latter manages, shall not acquire any shares carrying voting rights which would enable it to exercise significant influence over the management of the issuer.
- 6.45 The scheme may acquire no more than:
- i. 10 per cent of the non-voting shares of any single issuing body;
 - ii. 10 per cent of the debt securities of any single issuing body;
 - iii. 25 per cent of the units of any single UCITS and/or other collective investment schemes within the meaning of Article 1(2)(a) and (b) of Directive 2009/65/EC and
 - iv. 10 per cent of the money market instruments of any single issuing body.
- The limits prescribed in paragraphs (ii) to (iv) above, may be disregarded at the time of acquisition if at that time, the gross amount of the debt securities or of the money market instruments, or the net amount of the securities in issue, cannot be calculated.
- 6.46 Subject to the MFSA's approval, Rules 6.44 and 6.45 may be waived with regard to:

- i. transferable securities and money market instruments issued or guaranteed by a Member State or its local authorities;
- ii. transferable securities and money market instruments guaranteed by non-Member States;
- iii. transferable securities and money market instruments issued by public international bodies of which one or more Member States are members;
- iv. shares held by the scheme in the capital of a company incorporated in a non-Member State investing its assets mainly in securities of issuing bodies having their registered offices in that State, where, under the legislation of that State, such a holding represents the only way in which the scheme can invest in the securities of issuing bodies of that State:

Provided that the derogation outlined in paragraph (iv) shall apply only if in its investment policies, the company from the non-Member State complies with the limits laid down in Rules 6.06 to 6.10, 6.12, 6.14, 6.35, 6.36, 6.38 to 6.41 and 6.43 to 6.45. Where the limits set out in Rules 6.06 to 6.10, 6.12, 6.14, 6.35, 6.36, 6.38 to 6.41 and 6.43 are exceeded, Rules 6.02, 6.49 and 6.50 shall apply *mutatis mutandis*; and

- v. shares held by the scheme in the capital of subsidiary companies carrying on only the business of management, advice or marketing in the country where the subsidiary is located, in regard to the repurchase of units at unit-holder's request exclusively on its or their behalf.

➤ ***Borrowing limits***

- 6.47 Where the scheme is set up as an investment company it shall not borrow. Where the scheme is set up as a common fund, the manager or the depositary shall not borrow on its behalf. A scheme, may however acquire foreign currency by means of a "back-to-back" loan.

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By way of derogation from the above paragraph, a scheme may borrow provided that such borrowing is:

- a. on a temporary basis and represents:
 - (i) in the case of an investment company no more than 10% of its assets, or
 - (ii) in the case of a common fund, no more than 10% of the value of the fund;
 or
- b. to enable the acquisition of immovable property essential for the direct pursuit of its business and represents, in the case of an investment company, no more than 10% of its assets.

Where a scheme is authorised to borrow under sub-paragraphs (a) and (b) above, such borrowing shall not exceed 15% of its assets in total.

➤ ***Foreign currency lending***

- 6.48 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).

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 euro zone.

When 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.

➤ **Miscellaneous**

- 6.49 As long as the principle of risk-spreading is observed, the scheme shall not be required to comply with the investment restrictions outlined in Rules 6.06 to 6.12, 6.14, 6.35 to 6.41 and 6.43, during the first six months from its launch.
- 6.50 The scheme is not required to comply with the investment limits laid down in this Section 6 of these Rules when exercising subscription rights attaching to transferable securities or money market instruments, which form part of their assets.
- 6.51 Without prejudice to the provisions of Rules 5.01 to 5.03, 6.04 and 6.05, 6.13 and 6.18 to 6.22, the scheme shall not grant loans or act as guarantor on behalf of third parties.
- Nonetheless, Rule 6.49 shall not prevent such undertakings from acquiring transferable securities, money market instruments or other financial instruments referred to in Rule 5.01(v), (vii) and (viii) which are not fully paid.
- 6.52 Any material changes to the scheme's investment policies and restrictions shall be notified to investors in advance of the change.
- 6.53 Changes to the investment objectives of the scheme shall be subject to the prior approval of the scheme's unit-holders. 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.

➤ ***Side letters***

6.54 The scheme shall not enter into side letters.

➤ ***Distributions of income***

6.55 The scheme shall allocate and distribute its income in accordance with the provisions of Appendix IV to these Rules.

➤ ***Assessment of the global/ total exposure relating to financial derivative instruments***

6.56 The scheme or the manager on behalf of the scheme shall comply with the Rules on risk management, counterparty risk exposure and issuer concentration applicable to Maltese retail collective investment schemes established as UCITS prescribed in Appendix VI to these Rules.

➤ ***Use of repurchase/ reverse repurchase and stock borrowing/ stock lending agreements***

6.57 A scheme may only enter into repurchase/ reverse repurchase and stock lending/ stock borrowing agreements:

- i. when in the opinion of the scheme or its manager, the entering into such agreements by the scheme is appropriate and in the interest of investors in the scheme, and entails an acceptable level of risk; and
- ii. in accordance with good market practice, which involves the provision of adequate collateral which complies with the requirements prescribed in Appendix VI to these Rules.

6.58 Invested cash collateral which is held at the credit risk of the scheme, other than cash collateral invested in government or other public securities or qualifying money market funds, shall be diversified so that no more than 20 per cent of the collateral is invested in the securities of, or placed on deposit with, one institution. Invested cash collateral may not be placed on deposit with, or invested in securities issued by the counterparty or a related entity. Moreover, the scheme must be satisfied, at all times, that any investment of cash collateral will enable it to meet its repayment obligations.

6.59 The scheme may enter into stock lending/ stock borrowing programmes organized by generally recognized Central Securities Depositories Systems provided that the programme is subject to a guarantee from the system operator.

6.60 The counterparty to a repurchase/ reverse repurchase or stock lending/ stock borrowing agreement must have a minimum credit rating of A (Standard & Poor's)

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or A2 (Moody's) or such other rating, acceptable to MFS A, by another internationally renowned credit rating agency. Provided that an unrated counterparty will be acceptable where the scheme is indemnified against losses suffered as a result of a failure of the counterparty, by an entity which has and maintains a credit rating as provided above.

- 6.61 The scheme shall have the right to terminate the stock lending agreement at any time and demand the return of any or all of the securities loaned. The agreement must provide that, once notice is given, the borrower is obliged to redeliver the securities within 5 business days or other period as normal market practice dictates.
- 6.62 Repurchase/ reverse repurchase or stock lending/ stock borrowing agreements do not constitute borrowing or lending for the purposes of the scheme's borrowing or lending restrictions.
- 6.63 The scheme shall ensure that it is able at any time to recall any security that has been lent out or terminate any securities lending agreement into which it has entered.
- 6.64 A scheme that enters into a reverse repurchase agreement shall ensure that it is able at any time to recall the full amount of cash or to terminate the reverse repurchase agreement on either an accrued basis or a mark-to-market basis. When the cash is recallable at any time on a mark-to-market basis, the mark-to-market value of the reverse repurchase agreement shall be used for the calculation of the net asset value of the scheme.
- 6.65 A scheme that enters into a repurchase agreement shall ensure that it is able at any time to recall any securities subject to the repurchase agreement or to terminate the repurchase agreement into which it has entered.
- 6.66 Fixed-term repurchase and reverse repurchase agreements that do not exceed seven days shall be considered as arrangements on terms that allow the assets to be recalled at any time by the scheme.

Additional rules applicable to financing of SPVs

- 6.67 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;

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- (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
- (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.

6.68 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

6.69 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

6.70 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.

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

6.72 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).

6.73 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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Deleted: Additional rules applicable to financing of SPVs¶

¶ 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:¶

¶ 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;¶

¶ 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¶

¶ 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 ¶ for any other safeguards deemed appropriate by the directors of the Scheme.¶

Deleted: <#>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...

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7. THE PROSPECTUS, THE KEY INVESTOR INFORMATION DOCUMENT (KIID) AND THE INSTRUMENTS OF INCORPORATION

➤ ***The prospectus***

7.01 The scheme and/ or its manager shall publish a prospectus which shall be dated and the essential elements of which shall be kept up to date.

7.02 The scheme's prospectus shall include the information necessary for investors to be able to make an informed judgement of the investment proposed thereto, and in particular of the risks attached thereto, including a clear and easily understandable explanation of the scheme's risk profile. The text and the format of the prospectus, published or made available to the public, shall at all times be identical to the latest version approved by the MFSA. The manager and depositary of the scheme shall at all times comply with the conditions prescribed in the prospectus.

The prospectus shall include:

- (a) the details of the up-to-date remuneration policy including, but not limited to, a description of how remuneration and benefits are calculated, the identities of persons responsible for awarding the remuneration and benefits including the composition of the remuneration committee, where such a committee exists; or
- (b) a summary of the remuneration policy and a statement to the effect that the details of the up-to-date remuneration policy, including but not limited to, a description of how remuneration and benefits are calculated, the identity of persons responsible for awarding the remuneration and benefits, including the composition of the remuneration committee, where such a committee exists, are available by means of a website – including a reference to that website – and that a paper copy will be made available free of charge upon request.

7.03 The prospectus shall be offered to the investors free of charge and on request. In addition:

- i. where the scheme is established in the form of an investment company or a limited partnership registered in Malta, it shall lodge a signed copy of the prospectus with the Registrar of Companies. The prospectus shall be made available for inspection by the public;
- ii. where paragraph (i) above is not applicable, a scheme whose structure is other than in a corporate form shall lodge with the MFSA and the Registrar of Companies, a copy of the prospectus authenticated by an authorised person on behalf of the Scheme. The Registrar of Companies shall make the necessary arrangements to retain the documentation in an appropriate file for public access.

- 7.04 The prospectus may be provided to the investor in a durable medium or in electronic form. Nevertheless, the scheme or the financial intermediaries placing or selling the units of the scheme shall deliver a paper copy of the prospectus to the investor upon his request and free of charge.
- 7.05 The scheme's prospectus shall be made available in a printed form at the registered office of the scheme or the manager or other financial intermediaries placing or selling the units in the scheme.
- 7.06 The prospectus shall at least contain the information listed in Annex II of Appendix I, in so far as that information does not already appear in the scheme's instruments of incorporation annexed to the prospectus. The prospectus shall also contain any other disclosure as may be required by the MFSA in terms of the Act, these Rules or in terms of the scheme's licence conditions.
- 7.07 The prospectus shall indicate in which categories of assets the scheme is authorised to invest. Where the scheme may invest in financial derivative instruments, the prospectus shall include a prominent statement indicating whether investments in such derivative financial instruments may be carried out for the purpose of hedging or otherwise with the aim of meeting investment goals. The prospectus shall also include a prominent statement indicating the potential impact of the use of financial derivative instruments on the scheme's risk profile.
- 7.08 Where the scheme invests principally in a category of assets as defined in Rules 5.01 to 5.03 and 6.05, or where the scheme replicates a stock or debt securities index, the prospectus and marketing communication shall include a prominent statement drawing attention to the scheme's investment policy.
- 7.09 Where the scheme invests a substantial proportion of its assets in other collective investment schemes, the prospectus shall disclose the maximum level of management fees that may be charged both to the scheme and to the other collective investment schemes in which it intends to invest. The scheme shall also indicate in its annual report the maximum proportion of management fees charged to the scheme itself and to the other collective investment schemes in which it invests.
- 7.10 Where the scheme is authorised to invest up to 100 per cent of its assets in different transferable securities and money market instruments issued or guaranteed by a Member State, one or more of its local authorities, a third country, or a public international body to which one or more Member States belong, the prospectus and marketing communications shall contain a prominent statement drawing attention to such authorisation and indicating the Member State or EEA State, the local authority or public international bodies in the securities of which it intends to invest or has invested more than 35 per cent of its assets.

- 7.11 Where the net asset value of the scheme is likely to have a high volatility due to its portfolio composition or the portfolio management techniques that may be used, the prospectus and marketing communications shall include a prominent statement drawing attention to that characteristic.
- 7.12 Where the management company of the scheme has outsourced part of its functions, the prospectus shall indicate the functions which have been outsourced.
- 7.13 Where the scheme is a feeder fund, the prospectus shall, contain the following additional information other than the information provided for in Annex II of Appendix I:
- a. a declaration that the scheme is a feeder fund of a particular master fund and as such, permanently invests 85 per cent or more of its assets in units of that master fund;
 - b. the investment objective and policy, including the risk profile and whether the performance of the scheme and the master fund are identical, or to what extent and for which reasons they differ, including a description of the type of investment made;
 - c. a brief description of the master fund, its organisation, and its investment objective and policy, including the risk profile and an indication of how the prospectus of the master fund may be obtained;
 - d. a summary of the agreement entered into between the scheme and the master fund or of the internal conduct of business rules issued in accordance with section 12 of these Rules;
 - e. how the unit-holders may obtain further information on the master fund and the agreement entered into between the scheme and the master fund in accordance with section 12 of these Rules;
 - f. a description of all remuneration or reimbursement of costs payable by the scheme by virtue of its investment in units of the master fund, as well as of the aggregate charges of the scheme and the master fund; and
 - g. a description of the tax implications for the scheme resulting from its investment in the master fund.
- 7.14 The scheme's instruments of incorporation shall form an integral part of the prospectus and shall be annexed thereto:

Provided that such documents need not be annexed to the prospectus in the case where investors are informed that they may be provided with such documents upon

request or are otherwise informed of the place where such documents may be accessed.

- 7.15 The scheme shall send a paper copy of its prospectus and any amendments thereto to the MFSA. Where the scheme is a feeder fund it shall also provide the MFSA with a paper copy of the prospectus of the master fund.
- 7.16 Where the scheme's manager is established in another Member State or EEA State, the scheme shall, upon request, provide the prospectus and any amendments thereto to the European regulatory authority of that Member State.
- 7.17 Where the Scheme is a feeder fund, it shall also provide investors with a paper copy of the prospectus of the master fund free of charge and upon request.
- 7.18 Where the scheme is an ETF Scheme, the prospectus shall include the identifier 'UCITS ETF' in its name in order to provide investors with an indication that it is an exchange traded fund. The identifier remains the same in all languages. A scheme which is not an ETF Scheme shall not use the 'UCITS ETF' identifier, or other identifiers such as 'ETF' or 'exchange-traded fund'.
- 7.19 The scheme shall also comply with the conditions prescribed in [Commission Regulation No 583/2010](#)¹⁰.

➤ ***Key Investor Information Document (KIID)***

- 7.20 The scheme or the manager on behalf of the scheme shall draw up a short document on each scheme containing key information for investors. This document shall be referred to as the **Key Investor Information Document ('KIID')**. The words 'Key Investor Information' shall be clearly stated in the document.

Where the scheme is marketed outside Malta further to the notification procedures set out in the Investment Services Act (Marketing of UCITS) Regulations, the words 'Key Investor Information' shall be stated in one of the official languages of the host Member State where the scheme is marketed or into a language approved by the European regulatory authorities of that host Member State or EEA State.

- 7.21 The KIID shall include appropriate information about the essential characteristics of the scheme concerned, which information should be provided to investors so that they are reasonably able to understand the nature and the risks of the investment product that is being offered to them and, consequently, to take investment decisions on an informed basis.

¹⁰ Commission Regulation (EU) No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website

- 7.22 The KIID shall provide information on the following essential elements in respect of the scheme concerned:
- a. identification of the scheme;
 - b. a short description of the scheme's investment objectives and investment policy;
 - c. past performance presentation or, where relevant, performance scenarios;
 - d. costs and associated charges; and
 - e. risk/reward profile of the investment, including appropriate guidance on and warning of the risks associated with investments in the relevant scheme.

These essential elements shall be comprehensible to the investor without any reference to other documents.

- 7.23 The KIID of a scheme which is an **index-tracking scheme**, shall include in summary form information on how the index will be tracked¹¹ and the implications of the chosen method for investors in terms of their exposure to the underlying index and counterparty risk.

- 7.24 The KIID of a scheme which is an **index-tracking leveraged scheme** shall include in summary form the following information:

- (a) a description of the leverage policy, how this is achieved¹², the cost of the leverage where applicable and the risks associated with this policy;
- (b) a description of the impact of any reverse leverage (i.e. short exposure);
- (c) a description of how the performance of the scheme may differ significantly from the multiple of the index performance over the medium to long term.

- 7.25 The KIID of a scheme which is an **ETF** shall:

- (a) include the identifier 'UCITS ETF' which identifies the Scheme as an exchange-traded fund. The identifier remains the same in all languages;
- (b) disclose clearly in its KIID the policy regarding portfolio transparency and where information on the portfolio may be obtained, including where the indicative net asset value, if applicable, is published.

- 7.26 A scheme which is an **actively-managed ETF** shall disclose clearly in its KIID the following information namely:

- (a) that the scheme is an actively-managed ETF; and
- (b) the manner in which the scheme intends to meet the stated investment policy including, where applicable, its intention to outperform an index.

- 7.27 The KIID shall clearly specify where and how to obtain additional information on the proposed investment, including but not limited to where and how the prospectus

¹¹ For example whether it will follow a full or sample based physical replication model or a synthetic replication.

¹² i.e. whether the leverage is at the level of the index or arises from the way in which the scheme obtains exposure to the index.

and the annual and half-yearly reports can be obtained free of charge at any time, and the language in which such information is available to investors.

The KIID shall also include a statement to the effect that the details of the up-to-date remuneration policy, including, but not limited to, a description of how remuneration and benefits are calculated, the identify of persons responsible for awarding the remuneration and benefits including the composition of the remuneration committee, where such a committee exists, are available by means of a website – including a reference to that website – and that a paper copy will be made available free of charge upon request.

- 7.28 The KIID shall be written in a concise manner and in non-technical language. It shall be drawn up in a common format, allowing for comparison, and shall be presented in a way that is likely to be understood by retail investors.
- 7.29 Where the scheme is passporting outside Malta, the KIID shall be used without the need of alterations or supplements, except translation, in all Member States or EEA States where the scheme is notified to market its units in accordance with the Investment Services Act (Marketing of UCITS) Regulations.
- 7.30 In complying with the above Rules on the contents and format of the KIID, the scheme or the manager shall also refer and comply with the applicable provisions of Chapters I to IV of Commission Regulation No 583/2010.
- 7.31 The KIID shall constitute pre-contractual information. It shall be fair, clear and not misleading. It shall be consistent with the relevant parts of the prospectus.
- 7.32 The KIID shall contain a warning to the effect that the scheme and the manager shall not be liable to civil action on the basis of the information contained in the KIID, unless this information is misleading, inaccurate or inconsistent with the relevant parts of the prospectus.
- 7.33 The scheme or the manager, which sell units in the scheme directly or through another natural or legal person who acts on its behalf and under its full and unconditional responsibility, shall provide investors with the KIID on such scheme in good time before their proposed subscription of units in such a scheme. The KIID shall be provided to investors free of charge.
- 7.34 The scheme or the manager, which does not sell units in the scheme directly or through another natural or legal person who acts on its behalf and under its full and unconditional responsibility to investors, shall provide the KIID to product promoters and intermediaries selling or advising investors on potential investments in such a scheme or in products offering exposure to such scheme upon their request.

- 7.35 The KIID may be provided to investors in a durable medium or by means of a website. A paper copy shall be delivered free of charge to the investor, upon request.
- 7.36 The scheme or the manager shall ensure that an up-to-date version of the KIID is made available on their website.
- 7.37 In complying with Rules 7.35 and 7.36, the scheme or the manager shall also refer and comply with the applicable provisions of Chapter V of Commission Regulation No 583/2010.
- 7.38 The scheme shall submit its KIID and any amendments thereto, to the MFSA for approval prior publication.
- 7.39 The essential elements of the KIID shall be kept up to date.
- 7.40 In complying with the above Rules, the scheme or the manager shall also refer to the Guidelines issued by ESMA on the KIID which are hereby being included. The scheme is obliged to comply with the following list of ESMA/CESR Guidelines:
- i. [CESR's Template for Key Investor Information Document](#) [CESR/10-1321 dated 20 December 2010];
 - ii. [CESR's Guide to clear language and layout for the Key Investor Information Document](#) [CESR/10-1320 dated 20 December 2010];
 - iii. [CESR Guidelines on Transition from the Simplified Prospectus to the Key Investor Information Document](#) [CESR/10-1319 dated 20 December 2010];
 - iv. [CESR Guidelines on Selection and presentation of performance scenarios in the Key Investor Information Document \(KIID\) for structured UCITS](#) [CESR/10-1318 dated 20 December 2010];
 - v. [CESR's Guidelines on the methodology for calculation of the ongoing charges figure in the Key Investor Information Document](#) [CESR/10-674 dated 1 July 2010];
 - vi. [CESR's Guidelines on the methodology for the calculation of the synthetic risk and reward indicator in the Key Investor Information Document](#) [CESR/10-673 dated 1 July 2010]; and
 - vii. [Guidelines on ETFs and other UCITS issues](#) [ESMA/2014/937 dated 1 August 2014].

➤ ***The instruments of incorporation***

- 7.41 The instruments of incorporation of the scheme shall contain at least the information listed in Appendix III.
- 7.42 Any changes to the instruments of incorporation of the scheme shall be approved by the MFSA in advance of implementation.

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- 7.43 The instruments of incorporation of a scheme established as an ETF shall contain the identifier “UCITS ETF” which identifies it as an exchange-traded fund.

8. OTHER PUBLISHED INFORMATION INCLUDING PROMOTIONAL MATERIAL

- 8.01 The scheme shall make public in an appropriate manner the issue, sale, repurchase or redemption price of its units each time it issues, sells, repurchases or redeems such units, and in any event, it shall make such information public at least twice a month.
- 8.02 Notwithstanding the requirement prescribed in Rule 8.01, the MFS A may, however permit a scheme to reduce the frequency to once a month on condition that such derogation does not prejudice the interests of the unit-holders.
- 8.03 Upon request from an investor, the scheme shall also provide supplementary information relating to the quantitative limits that apply in the risk management of the scheme, to the methods chosen to this end and to the recent development with respect to the main risks and yields of the instrument categories.
- 8.04 The promotion of the scheme is subject to Article 11 of the Act and to the requirements of Section 3 of Part BI of the Investment Services Rules for Investment Services Providers.
- 8.05 The scheme may only be promoted in jurisdictions outside Malta if it satisfies the relevant rules of such jurisdictions.
- 8.06 Marketing communications shall be clearly identifiable as such. They shall be fair, clear and not misleading. In particular, any marketing communication comprising an invitation to purchase units of a scheme that contains specific information about the scheme shall not make statements that contradict or diminish the meaning of the information contained in the prospectus and, where applicable, the KIID.
- 8.07 All marketing communications and investment advertisements issued directly by the Scheme shall indicate that a prospectus exists and whether the KIID is available. It shall specify where and in which language such information or documents as well as any updating documents may be obtained by investors or potential investors or how they may obtain access to them.
- 8.08 Where the scheme is a feeder fund, it shall disclose in any relevant marketing communications that it permanently invests 85 per cent or more of its assets in units of the master fund.
- 8.09 All investment advertisements issued directly by the scheme shall be approved by the compliance officer.
- 8.10 A scheme which is an ETF shall use the identifier 'UCITS ETF' in all its marketing communications and promotional material. The identifier shall remain the same in all languages. A scheme which is not an ETF Scheme shall not use the 'UCITS ETF' identifier or other identifiers such as 'ETF' or 'exchange-traded fund'.

- 8.11 A scheme which is an ETF shall disclose clearly in all its marketing communications its policy regarding portfolio transparency and where information on the portfolio may be obtained, including where the indicative net asset value, if applicable, is published.
- 8.12 A scheme which is an actively-managed ETF shall disclose clearly in all its marketing communications the following information:
- a. that it is an actively-managed ETF; and
 - b. the manner in which the scheme intends to meet the stated investment policy including, where applicable, its intention to outperform an index.
- 8.13 Where units of an ETF purchased on a secondary market are generally not redeemable from the scheme, its marketing and promotional material shall include the following warning:

'UCITS ETF's units / shares purchased on the secondary market cannot usually be sold directly back to UCITS ETF. Investors must buy and sell units / shares on a secondary market with the assistance of an intermediary (e.g. a stockbroker) and may incur fees for doing so. In addition, investors may pay more than the current net asset value when buying units / shares and may receive less than the current net asset value when selling them.'

9. EXERCISE OF PASSPORT RIGHTS BY THE SCHEME

- 9.01 The scheme shall inform the MFSA of its intention to market its units in another Member State and shall follow the procedure outlined in regulation 4 of the Investment Services Act (Marketing of UCITS) Regulations.
- 9.02 As soon as the MFSA transmits all the documents and information provided by the scheme in the notification letter, it shall notify the scheme thereof and the latter may commence marketing its units in the host Member State or EEA State as from the date of such notification.
- 9.03 The scheme shall provide a notification letter as outlined in Schedule C to Part A of these Rules and it shall include the following information:
- i. information on the arrangements made for marketing the units of the scheme in the Member State or EEA State, including where relevant in respect of share classes; and
 - ii. an indication that the units of the scheme will be marketed by the management company that manages the scheme.
- 9.04 In addition to the information referred to in Rule 9.03, the scheme shall also enclose the following documentation:
- i. the latest version of its instruments of incorporation and its prospectus;
 - ii. where appropriate, its latest annual report and any subsequent half-yearly report; and
 - iii. the KIID as provided for in Rules 7.20 to 7.40.
- 9.05 The documents specified in paragraphs (ii) and (iii) of Rule 9.04 shall be translated in the official language, or one of the official languages of the Member State or EEA State in which the scheme is marketing its units or into a language approved by the European regulatory authority of such Member State or EEA State.

10. GENERAL

10.01 The head office and the registered office of the scheme shall both be situated in Malta.

10.02 The scheme shall obtain the approval of the MFSA before any of the following documents are amended:

- i. instruments of incorporation;
- ii. scheme rules (if not contained in (i));
- iii. any other document affecting the rights of participants in the scheme;
- iv. the latest annual report and any subsequent interim report for the scheme;
- v. the prospectus or similar document giving details of the scheme;
- vi. a business plan submitted to the MFSA;
- vii. a marketing plan submitted to the MFSA;
- viii. the management agreement and any other documents detailing the relationship between the scheme and the persons responsible for managing the scheme;
- ix. the agreement between the scheme or the manager and the administrator;
- x. the agreement between the scheme or the manager and the registrar;
- xi. the agreement between the scheme or the manager and the depositary; and
- xii. the agreement between the scheme or the manager and the investment adviser.

The scheme's instruments of incorporation shall establish the procedures for amending these documents.

10.03 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.

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.

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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.

- e) any proposed material change to its business – at least one month before the change is to take effect where a new or amended 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. A 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
- (v) the communications to be made to the investors particularly if remedial measures are adopted.

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- j) any other material information concerning the scheme, its business or its officials in Malta or abroad – immediately upon becoming aware of the matter.

10.04 The Scheme shall obtain the written consent of the MFSA before:

- b) taking any steps to cease its operations;
- c) agreeing to sell or merge the whole or any part of its undertaking;
- d) the appointment of a director or senior manager¹³, 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 E 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.

- e) the change in the responsibilities of a director or senior manager¹⁴ 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:

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

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¹³ 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.

¹⁴ 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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include a change in the status or seniority of the person concerned upwards or downwards.

10.05 The scheme and/ or the manager on behalf of the scheme shall comply with any applicable requirements of the External Transactions Act¹⁵.

10.06 The scheme shall be liable to the unit-holders for any loss or prejudice suffered by them resulting from its fraud, wilful default or negligence, including the unjustifiable failure to perform in whole or in part its obligations.

10.07 The scheme or the manager on behalf of the scheme shall comply with directions given by the custodian, being directions designed to ensure that the scheme is properly managed and administered in accordance with the instruments of incorporation, the Rules and the most recently published prospectus.

10.08 The scheme shall re-purchase or redeem its units at the request of the unit-holder. In any case:

- i. the scheme may, in accordance with the provisions of the Act, the instruments of incorporation of the scheme, where this is constituted as an investment company, temporarily suspend the repurchase or redemption of its units;

Provided that with regard to paragraph (i), the temporary suspension shall be provided for only in exceptional circumstances where circumstances so require and where suspension is justified having regard to the interests of the unit-holders.

- ii. the MFSA has the right to require the suspension of the repurchase or redemption of units of the scheme, where this is considered appropriate in the interests of unit-holders or of the public.

When the manager or the scheme temporarily suspends the repurchase or redemption of units as provided for in paragraph (i) above, it shall inform the MFSA immediately and the authorities of all Member States in which the scheme markets its units, in any event, within the working day

10.09 Any variation of the duties or charges by which the issue or sale price of units is increased or by which the redemption or repurchase price of units is decreased shall be notified to the MFSA and the custodian. Such variation shall be published in the revised prospectus at least 90 days before becoming effective. An increase in the duties or charges applied to the redemption or repurchase price shall be applied only to the units issued or sold after the date on which the increase takes effect.

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10.10 The ~~s~~cheme shall submit half-yearly and annual reports to the MFSA and such other information, returns and reports as the MFSA may from time to time request. The accounting information provided in the annual report shall be audited by a qualified auditor approved by the MFSA. The auditor's report, including any qualifications thereto shall be reproduced in full in the annual report. The half-yearly and annual reports ~~shall comply with the requirements prescribed in~~ Appendix II. The half-yearly and annual reports shall be published and submitted to the MFSA within two and four months respectively of the end of the period concerned.

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The ~~s~~cheme shall also 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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When requested to do so by the MFSA, a ~~s~~cheme shall also submit, on the following email address: statistics@mfsa.com.mt, any statistical returns which may be required under MFSA Rule 1 of 2012 on foreign currency lending.

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The ~~s~~cheme shall also submit, together with its annual report, a report on its derivatives positions. The report shall include the following information – as at the year end of the ~~s~~cheme – for every derivatives position of the ~~s~~cheme:

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The MFSA may request the submission of any additional information, returns and reports for statistical purposes and the ~~s~~cheme shall be bound to provide such additional information, returns and reports on the request of MFSA.

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10.11 The ~~s~~cheme, ~~the~~ ~~m~~anager or ~~a~~ administrator on its behalf shall keep ~~a~~ accounting and ~~such~~ 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 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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10.12 The ~~s~~cheme shall comply with all Maltese and overseas regulations to which it is subject and shall disclose the identity of the regulated entity and its regulator or regulators in all correspondence, advertisements and other documents. Wording similar to the following shall be used: “*Licensed as a ~~c~~ollective ~~i~~nvestment ~~s~~cheme, qualifying as a Maltese UCITS, by the Malta Financial Services Authority*”.

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10.13 The ~~s~~cheme shall comply with the Prevention of Money Laundering Act, 1994 and the ~~r~~egulations issued thereunder.

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10.14 The scheme shall co-operate fully with any inspection or other enquiry carried out by, or on behalf of, the MFSA and inform it promptly of any relevant information. The scheme shall supply the MFSA with such information as the MFSA may require.

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10.15 When requested to do so by the MFSA, a scheme shall submit to arbitration in respect of any dispute between itself and a unit-holder. Under such circumstances the MFSA shall be entitled to appoint an arbitrator.

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10.18 The financial year end of the scheme shall be agreed with the MFSA.

10.19 The MFSA shall be advised if the scheme does not reach a value equivalent to EUR 2,500,000 within six months from the launch thereof or if the value of the scheme falls below EUR 2,500,000. The depositary shall supervise the operation of the scheme to ensure that the scheme or the management company on behalf of the scheme complies with the investment policies and restrictions of the scheme:

Provided that the depositary shall proceed to notify the MFSA where the scheme has not reached a value equivalent to EUR 2,500,000 within six months from the launch thereof.

10.20 A request for a variation of a licence shall be submitted to the MFSA in writing, giving details of the variation requested and the reasons for such request.

10.21 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.

10.22 The MFSA shall be notified of any breach of the licence conditions or of any of the provisions of the instruments of incorporation as soon as the scheme, the manager or the administrator becomes aware of the breach.

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- 10.23 In the event of a winding-up, the scheme must give 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 conditions imposed by the MFSA.
- 10.24 The issue of bearer units, and the terms of that issue, shall be agreed in advance with the MFSA.
- 10.25 Where the scheme is not listed, it shall obtain the MFSA's advance permission before taking any preparatory steps to seeking a listing.
- 10.26 The MFSA shall prohibit a scheme subject to this Part and hence established as a UCITS Scheme from transforming itself into a collective investment scheme which is not so subject.

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11. SUPPLEMENTARY RULES FOR SCHEMES ESTABLISHED AS FUND OF FUNDS

- 11.01 The underlying schemes shall meet the criteria specified in Rule 5.01(v).
- 11.02 The underlying schemes shall fall within the objectives and investment policy as set out in the prospectus.
- 11.03 Price quotation and sale and repurchase arrangements for units in the scheme shall ensure that:
- i. a purchaser is able to purchase units at a price based on the most recent underlying scheme price or prices;
 - ii. the issuing of the units and the remitting of the purchase proceeds to the underlying scheme or schemes is achieved as soon as is practicable;
 - iii. a seller is able to sell units at a price based on the most recent underlying scheme price or prices;
 - iv. the cancellation (if appropriate) of the units and the remitting of the proceeds to the seller are achieved as soon as is practicable.
- 11.04 The scheme shall, as far as practicable, be valued with the same frequency as the underlying schemes.
- 11.05 The scheme shall not invest in a feeder fund or in a fund of funds.
- 11.06 Such information as is required by the MFSA concerning each underlying scheme shall be made available to the MFSA on request.

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12. SUPPLEMENTARY RULES FOR SCHEMES WHICH QUALIFY AS FEEDER UCITS OR MASTER UCITS

For the purposes of this section, a scheme established in Malta shall be referred to as a Maltese UCITS.

12.01 In order to qualify as a feeder UCITS, or a sub-fund thereof, the scheme's investment objective as approved by the MFSA, must be to invest at least 85 per cent of its assets in units of another UCITS (the master UCITS).

12.02 A feeder UCITS may hold up to 15 per cent of its assets in one or more of the following:

- a. ancillary liquid assets in accordance with Rule 6.04;
- b. financial derivative instruments, which may only be used for hedging purposes subject to compliance with Rules 5.01(vii), 6.13, 6.18 and 6.19;
- c. movable and immovable property which is essential for the direct pursuit of the business, if the feeder UCITS is an investment company.

12.03 For the purposes of ensuring compliance with Rules 6.19 to 6.22, the feeder UCITS shall calculate its global exposure related to financial derivative instruments by combining its own direct exposure under Rule 12.02(b) with either:

- a. the master UCITS' actual exposure to financial derivative instruments in proportion to the feeder UCITS' investment into the master UCITS; or
- b. the master UCITS' potential maximum global exposure to financial derivative instruments provided for in the master UCITS' fund rules or instruments of incorporation in proportion to the feeder UCITS investment into the master UCITS.

12.04 A master UCITS is a scheme or a sub-fund thereof, which:

- a. must have, among its unit-holders, at least one feeder UCITS;
- b. must not itself be a feeder UCITS; and
- c. must not hold units of a feeder UCITS.

12.05 For the purposes of regulations 3(2) and 3(4) of the Investment Services Act (Marketing of UCITS) Regulations, the following derogations for a master UCITS shall apply:

- a. if a master UCITS has at least two feeder UCITS as unit-holders, regulations 3(2)(a) and 3(4)(c) of the Investment Services Act (Marketing of UCITS) Regulations, shall not apply, giving the master UCITS the choice whether or not to raise capital from other investors;
- b. if a master UCITS does not raise capital from the public in a Member State or EEA State other than Malta, but only has one or more feeder UCITS in such Member State or EEA State, the provisions of the Investment Services Act (Marketing of UCITS) Regulations, shall not apply.

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12.06 A ~~s~~cheme which is a feeder UCITS shall obtain the MFSA's approval before investing into a given master UCITS, in an amount which exceeds the limit applicable under ~~Rule 6.38~~ for investments into other UCITS.

12.07 The MFSA shall inform the ~~s~~cheme which is a feeder UCITS within 15 working days following the submission of all required documents required in terms of ~~Rule 12.08~~, whether or not the feeder UCITS may invest in the master UCITS.

12.08 Prior to issuing an approval in terms of ~~Rule 12.06~~, the MFSA shall verify whether the feeder UCITS, its ~~depository~~ and its auditor, as well as the master UCITS, comply with all the requirements prescribed in this Section. For such purposes, the ~~s~~cheme which is a feeder UCITS shall provide the MFSA with the following documents:

- the fund rules or instruments of incorporation of the ~~s~~cheme which is a feeder UCITS and those of the master UCITS;
- the ~~prospectus~~ and the ~~KIID~~ of the Scheme which is a feeder UCITS and those of the master UCITS as prescribed in ~~Section 7 of this Part of the Rules~~;
- the agreement between the ~~s~~cheme which is a feeder and the master UCITS or the internal conduct of business rules referred to in ~~Rules 12.10 and 12.17 respectively~~;
- where applicable, the information to be provided to unit-holders in terms of ~~Rule 12.46~~;
- if the master UCITS and the ~~s~~cheme which is a feeder UCITS have different ~~depositories~~, the information-sharing agreement between their respective ~~depositories~~; and
- where the ~~s~~cheme which is a feeder UCITS and the master UCITS have different auditors, the information-sharing agreement between their respective auditors.

12.09 Where the master UCITS is established outside Malta, the ~~s~~cheme which is a feeder UCITS shall also provide the MFSA with an attestation by the European regulatory authorities of the master UCITS home Member State or EEA State, that the master UCITS is a UCITS, or a sub-fund thereof, which is not itself a feeder UCITS and does not hold units of a feeder UCITS. The documents shall be provided to the MFSA by the feeder UCITS in English or any other language approved by the MFSA.

12.10 The master UCITS shall provide the ~~s~~cheme which is a feeder UCITS with all documents and information necessary for the latter to meet the requirements laid down in ~~this Part of the Rules~~ and Directive 2009/65/EC. ~~For this purpose, the feeder UCITS shall enter into an agreement with the master UCITS.~~

12.11 The feeder UCITS shall not invest in excess of the limit applicable under ~~Rules 6.38~~ in units of that master UCITS until the agreement referred to in ~~Rule 12.10~~ has become effective. That agreement shall be made available, on request and free of charge, to all unit-holders.

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12.12 For the purposes of verifying compliance with **Rules 12.10 and 12.11**, the agreement referred to above shall include the following:

- a. the timing and the manner in which the master UCITS shall provide the **scheme** which is a feeder UCITS with a copy of its fund rules and instruments of incorporation, prospectus and **KIID** and any amendments thereof;
- b. the timing and the manner in which the master UCITS shall inform the **scheme** which is a feeder UCITS of a delegation of investment management and risk management functions to third parties;
- c. where applicable, the timing and the manner in which the master UCITS shall provide the **scheme** which is a feeder UCITS with internal operational documents, such as its risk management process and its compliance reports;
- d. the timing and manner in which the master UCITS shall provide the **scheme** which is a feeder UCITS with information of any breaches by the master UCITS of legislation to which it is subject, the fund rules or instruments of incorporation and the aforementioned agreement;
- e. a statement that the master UCITS shall inform the **scheme** which is a feeder UCITS of any other information-sharing arrangements entered into with third parties and where applicable, how and when the master UCITS shall make those other information-sharing arrangements available to the **scheme**.

12.13 In addition, the agreement referred to in **Rules 12.10 to 12.12** above shall include the following **additional information**:

(i) *Basis for investment and divestment*

- a. a statement of which share classes of the master UCITS are available for investment by the scheme which is a feeder UCITS;
- b. the charges and expenses to be borne by the scheme which is a feeder UCITS and details of any rebate or retrocession of charges or expenses by the master UCITS;
- c. if applicable, terms of any initial or subsequent transfer of assets in kind which may be made from the scheme which is a feeder UCITS to the master UCITS.

(ii) *Standard dealing arrangements:*

- a. coordination of the frequency and timing of the net asset value calculation process and the publication of prices of units;
- b. coordination of transmission of dealing orders by the scheme which is a feeder UCITS, including where applicable the role of transfer agents or any other third party;
- c. where applicable, any arrangements necessary to take account of the fact that either or both UCITS are listed or traded on a secondary market;

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- d. where necessary other appropriate measures to ensure compliance with Rule 12.17(iv);
- e. where the units of the scheme which is a feeder UCITS and the master UCITS are denominated in different currencies, the basis for conversion of dealing orders;
- f. settlement cycles and payment details for purchases or subscriptions and repurchases or redemptions of units of the master UCITS including, where agreed between the parties, the terms on which the master UCITS may settle redemption requests by a transfer of assets in kind to the scheme which is a feeder UCITS notably in the cases referred to in Rules 12.19 and 12.27;
- g. procedures to ensure enquires and complaints from unit-holders are handled appropriately;
- h. where the fund rules or instruments of incorporation and prospectus of the master UCITS give it certain rights or powers in relation to unit-holders, and the master UCITS chooses to limit or forgo the exercise of all or any such rights and powers in relation to the scheme which is a feeder UCITS, a statement of the terms on which it does so.

(iii) *Events affecting dealing arrangements:*

- a. the manner and timing of a notification by either UCITS of the temporary suspension and the resumption of the repurchase, redemption, purchase or subscription of units of that UCITS;
- b. arrangements for notifying and resolving pricing errors in the master UCITS.

(iv) *Standard arrangements for the audit report:*

- a. where the scheme which is a feeder UCITS and the master UCITS have the same accounting years, the coordination of the production of their periodic reports;
- b. where the scheme which is a feeder UCITS and the master UCITS have different accounting years, arrangements for the scheme which is a feeder UCITS to obtain any necessary information from the master UCITS to enable it to produce its periodic reports on time and which ensure that the auditor of the master UCITS is in a position to produce an *ad hoc* report on the closing date of the scheme which is a feeder UCITS in accordance with Rules 12.39 and 12.40.

(v) *Standing arrangements:*

- a. the manner and timing of a notice to be given by the master UCITS of proposed and effective amendments to its fund rules or instruments of incorporation, prospectus and KIID, if these details differ from the standard arrangements for notification of unit-holders laid down in the master UCITS fund rules, instruments of incorporation or prospectus;

- b. the manner and timing of notice by the master UCITS of a planned or proposed liquidation, merger or division;
- c. the manner and timing of notice by either UCITS that it has ceased or will cease to meet the qualifying conditions to be a feeder UCITS or a master UCITS respectively;
- d. the manner and timing of notice by either UCITS that it intends to replace its management company, its depositary, its auditor or any third party which is mandated to carry out investment management or risk management functions;
- e. the manner and timing of notice of other changes to standing arrangements that the master UCITS undertakes to provide.

12.14 Where both the feeder UCITS and the master UCITS are Maltese schemes, the agreement between the master UCITS and the feeder UCITS shall provide that Maltese law shall apply to the written agreement and that both parties agree to the exclusive jurisdiction of the Courts of Malta.

12.15 Where either the feeder UCITS or the master UCITS is a Maltese scheme, the written agreement shall provide that the applicable law shall be either Maltese law or the law of the Member State or EEA State where the other UCITS is established, and that both parties agree to the exclusive jurisdiction of the courts of the Member State or EEA State whose law they have stipulated to be applicable to the agreement.

12.16 In the event that both master and feeder UCITS are managed by the same management company, the agreement may be replaced by **internal conduct of business rules** ensuring compliance with the requirements set out in Rules 12.10 to 12.15. The management company's internal conduct of business rules shall include appropriate measures to mitigate conflicts of interest that may arise between the feeder UCITS and the master UCITS, or between the feeder UCITS and other unit-holders of the master UCITS.

12.17 The internal conduct of business rules referred to in Rule 12.16 shall include the following information:

(i) *Basis for investment and divestment:*

- a. a statement indicating the share classes of the master UCITS which are available for investment by the scheme which is a feeder UCITS;
- b. the charges and expenses to be borne by the scheme which is a feeder UCITS and details of any rebate or retrocession of charges or expenses by the master UCITS;
- c. if applicable, terms of any initial or subsequent transfer of assets in kind which may be made from the scheme which is a feeder UCITS to the master UCITS.

(ii) *Standard dealing arrangements:*

- a. coordination of the frequency and timing of the net asset value calculation process and the publication of prices of units;
- b. coordination of transmission of dealing orders by the scheme which is a feeder UCITS, including where applicable the role of transfer agents or any other third party;
- c. where applicable, any arrangements necessary to take account of the fact that either or both UCITS are listed or traded on a secondary market;
- d. where necessary other appropriate measures to ensure compliance with paragraph (iv) of this Rule;
- e. where the units of the Scheme which is a feeder UCITS and the master UCITS are denominated in different currencies the basis for conversion of dealing orders;
- f. settlement cycles and payment details for purchases or subscriptions and repurchases or redemptions of units of the master UCITS including, where agreed between the parties, the terms on which the master UCITS may settle redemption requests by a transfer of assets in kind to the Maltese UCITS which is a feeder UCITS, notably in the cases referred to in Rules 12.19 and 12.27;
- g. procedures to ensure enquires and complaints from unit-holders are handled appropriately;
- h. where the fund rules or instruments of incorporation and prospectus of the master UCITS give it certain rights or powers in relation to unit-holders, and the master UCITS chooses to limit or forego the exercise of all or any such rights and powers in relation to the scheme which is a feeder UCITS, a statement of the terms on which it does so.

(iii) *Events affecting dealing arrangements:*

- a. the manner and timing of a notification by either UCITS of the temporary suspension and the resumption of the repurchase, redemption, or subscription of units of that UCITS;
- b. arrangements for notifying and resolving pricing errors in the master UCITS.

(iv) *Standard arrangements for the audit report:*

- a. where the feeder UCITS and the master UCITS have the same accounting years, the coordination of the production of their periodic reports;
- b. where the feeder UCITS and the master UCITS have different accounting years, arrangements for the feeder UCITS to obtain any necessary information from the master UCITS to enable it to produce periodic reports on time and which ensure that the auditor of the master UCITS is in a position to make an ad hoc report on the closing date of the feeder UCITS in accordance with Rule 12.40.

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12.18 The master and the feeder UCITS shall take appropriate measures to coordinate the timing¹⁶ of their net asset value calculation and publication in order to avoid market timing in their units, preventing arbitrage opportunities.

12.19 Without prejudice to Rule 10.06, if a master UCITS temporarily suspends the repurchase, redemption or subscription of its units, whether at its own initiative or at the request of its competent authorities, each of its feeder UCITS is entitled to suspend the repurchase, redemption or subscription of its units notwithstanding the conditions laid down in Rule 10.06 within the same period of time as the master UCITS.

12.20 If a master UCITS is liquidated, the scheme which is a feeder UCITS shall also be liquidated, unless the MFSA approves:

- a. the investment of at least 85 per cent of the assets of the scheme in units of another master UCITS; or
- b. the amendment of its fund rules or instruments of incorporation in order to enable the scheme to convert into a UCITS which is not a feeder UCITS.

Provided that the liquidation of a master UCITS shall not take place before three months after the master UCITS has informed all of its unit-holders and the MFSA of the binding decision to liquidate.

12.21 Where the scheme is a feeder UCITS which has investments in a master UCITS which is to be liquidated, the scheme shall submit the following information to the MFSA no later than two months after the date on which the master UCITS informed the scheme of the binding decision to liquidate:

- a. where the scheme intends to invest at least 85 per cent of its assets in units of another master UCITS in accordance with Rule 12.20(a):
 - i. its application for approval for that investment;
 - ii. the application for approval of the proposed amendments to its fund rules or instruments of incorporation;
 - iii. the amendments to its prospectus and its KIID;
 - iv. the other documents required pursuant to Rules 12.08 and 12.09;
- b. where the scheme intends to convert into a UCITS that is not a feeder UCITS in accordance with Rule 12.20(b):
 - i. the application for approval of the proposed amendments to its fund rules or instrument of incorporation;
 - ii. the amendments to its prospectus and its KIID;

¹⁶ For the purpose of this Rule “market timing” is the strategy of attempting to predict the future price movements and thus the direction of the market, typically through the use of various fundamental and technical indicators or economic data. Thus market timing is the practice of switching among fund asset classes in an attempt to profit from the changes in their market outlook.

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c. where the feeder UCITS intends to be liquidated, a notification of that intention.

12.22 By way of derogation from Rule 12.21, where the master UCITS informed the scheme which is a feeder UCITS of its binding decision to liquidate more than five months prior to the date at which the liquidation will commence, the scheme shall submit to the MFSA its application or notification in accordance with Rule 12.21 within three months prior to the date set for the liquidation of the scheme.

12.23 Where the scheme which is a feeder UCITS has made a decision to wind up its operation and be liquidated, it shall inform its unit-holders of its decision without undue delay.

12.24 The scheme which is a feeder UCITS shall be informed within 15 working days following the submission of the complete and accurate documents referred to in Rule 12.21(a) or (b) respectively, whether the MFSA has granted the required approval.

12.25 On receiving the MFSA's approval pursuant to Rule 12.31, the scheme which is a feeder UCITS shall inform the master UCITS about the approval, without undue delay.

12.26 Where the approval is issued pursuant to Rule 12.21(a), the scheme which is a feeder UCITS shall take all the necessary measures to comply with the requirements prescribed in Rules 12.48 to 12.51 as soon as possible and without undue delay.

12.27 Where the payment of liquidation proceeds of the master UCITS is to be executed prior to the date on which the scheme which is a feeder UCITS is to start to invest in either a different master UCITS pursuant to Rule 12.21(a) or in accordance with new investment objectives and policy pursuant to Rule 12.21(b), the MFSA shall grant approval subject to the following conditions:

- a. the scheme shall receive the proceeds of the liquidation:
 - i. in cash; or
 - ii. some or all of the proceeds as a transfer of assets in kind where the scheme so wishes and where the agreement between the scheme and master UCITS or the internal conduct of business rules and the binding decision to liquidate provide for the proceeds to be transferred in this manner;
- b. any cash held or received in accordance with this Rule may be re-invested only for the purpose of efficient cash management before the date on which the scheme is to start to invest either in a different master UCITS or in accordance with its new investment objectives and policy.

Where paragraph (a)(ii) above applies, the scheme may realise any part of the assets transferred in kind for cash at any time.

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12.28 If a master UCITS merges with another UCITS or is divided into two or more UCITS, the feeder UCITS shall be liquidated, unless the MFS grants approval to the feeder UCITS to:

- continue to be a feeder UCITS of the master UCITS or another UCITS resulting from the merger or division of the master UCITS;
- invest at least 85 **per cent** of its assets in units of another master UCITS not resulting from the merger or the division; or
- amend its fund rules or its instruments of incorporation in order to convert into a UCITS which is not a feeder UCITS.

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Depositories

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12.29 If the master and the feeder UCITS have different **depositories**, such schemes shall require their **depositories** to enter into an information-sharing agreement in order to ensure the fulfilment of the duties of both **depositories**. The feeder UCITS shall not invest in units of the master UCITS until such agreement has become effective.

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12.30 The information-sharing agreement between the **depository** of the master UCITS and the **depository** of a feeder UCITS shall include the following:

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- the identification of the documents and categories of information which are to be routinely shared between both **depositories**, and whether such information or documents are provided by one **depository** to the other or made available upon request;

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- the manner and timing, including any applicable deadlines of the transmission of information by the **depository** of the master UCITS to the **depository** of the feeder UCITS;

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- the coordination of the involvement of both **depositories**, to the extent appropriate in view of their respective duties under national law, in relation to operational matters, including:

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- the procedure for calculating the net asset value of each UCITS including any measures appropriate to protect against the activities of market timing in accordance with **Rule 12.18**;

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- the processing of instructions by the Scheme which is a feeder UCITS to purchase, subscribe or request the repurchase or redemption of units in the master UCITS, and the settlement of such transactions, including any arrangement to transfer assets in kind;

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- the coordination of accounting year-end procedures;

- the details of breaches by the master UCITS of the law and the fund rules or instruments of incorporation which shall be provided by the **depository** of the

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master UCITS to the depository of the feeder UCITS and the manner and timing of this exchange of information;

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f. the procedure for handling ad hoc requests for assistance from one depository to the other;

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g. identification of a particular contingent event which ought to be notified by one depository to the other on an ad hoc basis, and the manner and timing in which this will be done.

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12.31 Where the feeder UCITS and the master UCITS have concluded a written agreement pursuant to Rules 12.10 to 12.15, the agreement between the respective depositories shall provide that the law of the Member State or EEA State applying to that agreement shall also apply to the information-sharing agreement between both depositories and that both depositories agree to the exclusive jurisdiction of that particular Member State or EEA State.

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12.32 Where the agreement between the feeder UCITS and the master UCITS has been replaced by internal conduct of business rules in accordance with Rule 12.16, the agreement between the depositories of the master UCITS and the feeder UCITS shall provide that the law applying to the information-sharing agreement between both depositories shall be either that of the Member State or EEA State in which the feeder UCITS is established, or, where different, that of the Member State or EEA State in which the master UCITS is established and that both depositories agree to the exclusive jurisdiction of the courts of the Member State or EEA State whose law is applicable to the information-sharing agreement.

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12.33 Where the depositories comply with the requirements prescribed with these Rules, neither the depository of the master UCITS nor that of the feeder UCITS shall be found to be in breach of any rules that restrict the disclosure of information or relate to data protection where such rules are provided for in a contract or in a law, regulation or administrative provisions. Such compliance shall not give rise to any liability on the part of such depository or any person acting on its behalf.

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12.34 The Scheme which is a feeder UCITS or, when applicable, the management company, shall be in charge of communicating to its depository any information about the master UCITS which is required for the completion of the duties of the depository of the feeder UCITS.

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Auditors

12.35 If the master and feeder UCITS have different auditors, they shall require those auditors to enter into an exchange of information agreement in order to ensure the fulfilment of the duties of both auditors, including the arrangements taken to comply with the requirement of Rules 12.40 and 12.41. The scheme which is a feeder UCITS

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shall not invest in units of the master UCITS until the exchange of information agreement has become effective.

12.36 The information-sharing agreement between the auditor of the master UCITS and the auditor of the feeder UCITS shall include the following:

- a. the identification of the documents and categories of information which are to be routinely shared between both auditors;
- b. whether the information or documents referred to in paragraph (a) are to be provided by one auditor to the other or made available upon request;
- c. the manner and timing, including any applicable deadlines, of the transmission of information by the auditor of the master UCITS to the auditor of the ~~scheme~~ which is a feeder UCITS;
- d. the coordination of the involvement of each auditor in the accounting year-end procedures for the respective UCITS;
- e. identification of matters that shall be treated as irregularities disclosed in the audit report of the auditor of the master UCITS for the purposes of Rule 12.41;
- f. the manner and timing for handling ad hoc requests for assistance from one auditor to the other, including a request for further information on irregularities disclosed in the audit report of the auditor of the master UCITS;
- g. provisions on the preparation of the audit reports and the manner and timing for the provision of the audit report for the master UCITS and drafts of it to the auditor of the feeder UCITS.

12.37 Where the feeder UCITS and the master UCITS have different accounting year-end dates, the exchange of information agreement shall include the manner and timing by which the auditor of the master UCITS is to make the ad hoc report required in terms of Rule 12.40 and to provide it and drafts thereof to the auditor of the feeder UCITS.

12.38 Where the feeder UCITS and the master UCITS have concluded a written agreement pursuant to Rules 12.10 to 12.15, the agreement between the respective auditors shall provide that the law of the Member State or EEA State applying to that agreement shall also apply to the information sharing agreement between both auditors and that both auditors agree to the exclusive jurisdiction of that particular Member State or EEA State.

12.39 Where the agreement between the feeder UCITS and the master UCITS has been replaced by internal conduct of business rules in accordance with Rule 12.16, the agreement between the auditors of the master UCITS and the feeder UCITS shall provide that the law applying to the agreement between both auditors shall be either that of the Member State or EEA State in which the feeder UCITS is established, or, where different, that of the Member State or EEA State in which the master UCITS is established and that both auditors agree to the exclusive jurisdiction of the courts of the Member State or EEA State whose law is applicable to the agreement.

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12.40 In its audit report, the auditor of the scheme which is a feeder UCITS shall take into account the audit report of the master UCITS. If the feeder and the master UCITS have different accounting years, the auditor of the master UCITS shall make an ad hoc report on the closing date of the feeder UCITS.

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12.41 The auditor of the scheme which is a feeder UCITS shall, in particular, report on any irregularities revealed in the audit report of the master UCITS and on their impact on the scheme.

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12.42 Where the auditors comply with the requirements prescribed with these Rules, neither the auditor of the master UCITS nor that of the feeder UCITS shall be found to be in breach of any rules that restrict the disclosure of information or relate to data protection where such rules are provided for in a contract or in a law, regulation or administrative provisions. Such compliance shall not give rise to any liability on the part of such auditor or any person acting on its behalf.

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Compulsory information and marketing communications by the feeder UCITS

➤ Prospectus

12.43 The feeder UCITS shall ensure that, in addition to the information required in Annex II of Appendix I of these Rules, its prospectus also contains the following information:

- a. a declaration that the feeder UCITS is a feeder of a particular master UCITS and as such permanently invests 85 per cent or more of its assets in units of that master UCITS;
- b. the investment objective and policy, including the risk profile and whether the performance of the feeder and the master UCITS are identical, or to what extent and for which reasons they differ, including a description of investment made in accordance with Rules 12.02 and 12.03;
- c. a brief description of the master UCITS, its organisation, its investment objective and policy, including the risk profile, and an indication of how the prospectus of the master UCITS may be obtained;
- d. a summary of the agreement entered into between the feeder UCITS and the master UCITS pursuant to Rules 12.10 to 12.15 or of the internal conduct of business rules pursuant to Rules 12.16 and 12.17;
- e. how the unit-holders may obtain further information on the master UCITS and the agreement entered into between the feeder UCITS and the master UCITS pursuant to Rules 12.10 to 12.15;
- f. a description of all remuneration or reimbursement of costs payable by the feeder UCITS by virtue of its investment in units of the master UCITS, as well as of the aggregate charges of the feeder UCITS and the master UCITS; and
- g. a description of the tax implications of the investment into the master UCITS for the feeder UCITS.

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➤ Annual report

12.44 The feeder UCITS shall ensure that, in addition to the information provided in Appendix II of these Rules, the annual report of the feeder UCITS also contains:

- a. a statement on the aggregate charges of the feeder UCITS and the master UCITS; and
- b. details of how the annual and the half-yearly reports of the master UCITS can be obtained.

12.45 In addition to the requirements prescribed in Rules 7.15, 7.16 and 7.22, the feeder UCITS shall send the prospectus, the KIID, and any amendment thereto, as well as the annual and half-yearly reports of the master UCITS, to MFSA.

12.46 A feeder UCITS shall disclose in any relevant marketing communications that it permanently invests 85 per cent or more of its assets in units of such master UCITS.

12.47 A paper copy of the prospectus, and the annual and half-yearly reports of the master UCITS shall be delivered by the feeder UCITS to investors on request and free of charge.

Conversion of Existing UCITS into Feeder UCITS and Change of Master UCITS

12.48 A feeder UCITS which already pursues activities as a UCITS, including those of a feeder UCITS of a different master UCITS, shall provide the following information to its unit-holders:

- a. a statement that the MFSA has approved the investment of the feeder UCITS in units of such master UCITS;
- b. the KIID, concerning the feeder and the master UCITS;
- c. the date when the feeder UCITS is to start to invest in the master UCITS or, if it has already invested therein, the date when its investment will exceed the limit applicable under Rule 7.38; and
- d. a statement that the unit-holders have the right to request within 30 days the repurchase or redemption of their units without any charges other than those retained by the UCITS to cover disinvestment costs; that right shall become effective from the moment the feeder UCITS has provided the information referred to in this paragraph.

The above information shall be provided at least 30 days before the date referred to in paragraph (c) of this Rule.

12.49 The feeder UCITS shall provide the information to unit-holders pursuant to this Rule in the same manner as prescribed in Rules 12.52 to 12.54 hereunder.

12.50 In the event that the feeder UCITS has passported into another Member State in terms of Investment Services Act (Marketing of UCITS) Regulations, the information

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referred to in Rule 12.48 shall be provided in the official language, or one of the official languages, of the feeder UCITS host Member State or in a language approved by its competent authorities. The feeder UCITS shall be responsible for producing the translation. That translation shall faithfully reflect the content of the original.

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12.51 The feeder UCITS shall not invest into the units of the given master UCITS in excess of the limit applicable under Rule 6.38 before the period of 30 days referred to in Rule 12.48 has elapsed.

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12.52 A feeder UCITS which is a scheme shall provide the information to unit-holders on paper or in another durable medium.

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12.53 Where the information is to be provided to all or certain unit-holders using a durable medium other than paper, the following conditions shall be fulfilled:

- a. the provision of the information is appropriate to the context in which the business between the unit-holder and the merging and the receiving UCITS or, where relevant, the respective management company is, or is to be, carried on;
- b. the unit-holder to whom the information is to be provided when offered the choice between the information on paper or in another durable medium, specifically chooses the durable medium other than paper.

12.54 For the purposes of Rules 12.52 and 12.53, the provision of information by means of electronic communications shall be treated as appropriate to the context in which the business between the merging and receiving UCITS or their respective management companies and the unit-holder is, or is to be, carried on if there is evident that the unit-holder has regular access to the internet. The provision by the unit-holder of an e-mail address for the purposes of the carrying on of that business shall be treated as such evidence.

Obligations and competent authorities

12.55 The scheme which is a feeder UCITS shall monitor effectively the activity of the master UCITS. In performing that obligation, the feeder UCITS may rely on information and documents received from the master UCITS or, where applicable, its management company, depositary and auditor, unless there is reason to doubt their accuracy.

12.56 Where, in connection with an investment in the units of the master UCITS, a distribution fee, commission or other monetary benefit is received by the feeder UCITS which is a scheme, its management company, or any person acting on behalf of either the feeder UCITS or the management company of the feeder UCITS or any person acting on their behalf, the fee, commission or other monetary benefit shall be paid into the assets of the feeder UCITS.

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- 12.57 The master UCITS shall immediately inform the MFS A of the identity of each feeder UCITS which invests in its units. Where the feeder UCITS is established outside Malta, the MFS A shall immediately inform the European regulatory authority of the feeder UCITS home Member State of such investment.
- 12.58 The master UCITS shall not charge subscription or redemption fees for the investment of the feeder UCITS into its units or the redemption thereof.
- 12.59 The master UCITS shall ensure the timely availability of all information that is required in accordance with these Rules, the Maltese law, the fund rules or the instruments of incorporation to the feeder UCITS which is a scheme or, where applicable, its management company, and to the MFS A, the depositary and the auditor of the feeder UCITS.
- 12.60 Where the master UCITS and the feeder UCITS are established in Malta, the MFS A shall immediately inform the feeder UCITS of any decision, measure, observation of non-compliance with the conditions of this Section of these Rules or of any information listed hereunder with regard to the master UCITS or, where applicable, its management company, depositary or auditor:
- a a material breach of the laws, regulations or administrative provisions which prescribed the conditions regulating authorisation or which specifically regulate the pursuit of the activities of the scheme or undertakings contributing towards their business activity;
 - b the impairment of the continuous functioning of the scheme or an undertaking contributing towards its business activity;
 - c a refusal to certify the accounts or the expression of reservations.
- 12.61 Where the master UCITS is established in Malta and the feeder UCITS is established in another Member State or EEA State, the MFS A shall immediately communicate any decision, measure, observation of non-compliance with the conditions of this Section of these Rules or information listed hereunder with regard to the master UCITS or, where applicable, its management company, depositary or auditor, to the European regulatory authorities of the feeder UCITS home Member State.
- a a material breach of the laws, regulations or administrative provisions which prescribed the conditions regulating authorisation or which specifically regulate the pursuit of the activities of the scheme or undertakings contributing towards their business activity;
 - b the impairment of the continuous functioning of the scheme or an undertaking contributing towards its business activity;
 - c a refusal to certify the accounts or the expression of reservations.

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