

# INVESTMENT SERVICES RULES FOR RETAIL COLLECTIVE INVESTMENT SCHEMES

## PART BI: RULES APPLICABLE TO RETAIL ALTERNATIVE INVESTMENT FUNDS

### 1. GENERAL REQUIREMENTS

- 1.01 Every retail AIF (hereinafter referred to as 'scheme') shall comply with the provisions of the Investment Services Act, the regulations and the applicable Investment Services Rules issued thereunder. A scheme may be managed in one of two ways :
- by an external manager, which is the legal person appointed by the scheme or on behalf of the scheme and which through this appointment is responsible for managing the scheme also referred to as "external AIFM"; or
  - where the legal form of the scheme permits an internal management, and where the scheme's governing body chooses not to appoint an external AIFM, by the scheme itself, which shall be licenced as a retail self-managed AIF.
- 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. In the case of umbrella schemes, reference to the scheme shall be construed, where applicable, as reference to the sub-funds of the scheme.
- 1.03 Where the scheme is established as a money market fund, it shall also be subject to the supplementary rules applicable thereto as prescribed in Appendix VII.
- 1.04 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 circumstances of the case, the MFSA may decide to suspend or cancel the licence in accordance with the relevant provisions of the Act.
- 1.05 The scheme shall co-operate in an open and honest manner with the MFSA and inform it promptly of any relevant information. It shall co-operate fully with any inspection or other enquiry carried out by, or on behalf of the MFSA and provide promptly any relevant information. The scheme shall provide the MFSA with such information and returns as the MFSA may require to monitor compliance with the conditions referred to in the Act and any rules and regulations issued thereunder.

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 Part B of the Investment Services Rules for Alternative Investment Funds shall apply as follows:¶

<#>Sections 1 to 7 shall apply to all AIFs whether these have appointed an external AIFM or are self-managed AIFs.¶  
 <#>Section 8 shall apply **exclusively** to self-managed AIFs. Therefore, self-managed AIFs are expected to comply with **all** the sections prescribed in this Part B of the Rules.

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

1.07 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.

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

- (A) the name and role of the official departing;
- (B) the reason of departure i.e. resignation, dismissal, re-organisation etc.;
- (C) the effective date of resignation;
- (D) the proposed replacement.

The scheme shall also request the director or senior manager, portfolio manager, compliance officer, money laundering reporting officer and risk manager to confirm in writing to the MFSA:

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

A copy of the scheme's request to the departing official shall be provided to 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.

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

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

- a) taking any steps to cease its operations;
- b) agreeing to sell or merge the whole or any part of its undertaking;

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- c) the appointment of a director or senior manager<sup>1</sup>, 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.

- d) the change in the responsibilities of a director or senior manager<sup>2</sup> 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 include a change in the status or seniority of the person concerned upwards or downwards.

**1.09** The scheme shall pay promptly all amounts due to the MFSA. The supervision 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.

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

<sup>1</sup> 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.

<sup>2</sup> 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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1.11 Without prejudice to Rule 1.10, the scheme, or the AIFM on behalf of the scheme may submit to the MFSA a request for a derogation from any specific Rule included in the Rulebook.

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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.

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

1.14 The scheme, or the AIFM 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 AIFM on behalf of the scheme deems that the derogation is still appropriate and required, the scheme or the AIFM on behalf of the scheme shall submit to the MFSA an updated assessment prior to the expiration of such derogation.

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1.16 The scheme shall notify the MFSA of any breach of the licence conditions or of any of the provisions of the prospectus or instruments of incorporation of the scheme as soon as it becomes aware of the breach.

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

- (a) an indication of the Rule or the investment restriction breached (in the case advertent breaches) and the contents thereof;
- (b) the date/period when the breach occurred and when/by whom it was discovered;
- (c) the nature of the breach and the manner in which it occurred;
- (d) the impact of the breach on the scheme and the underlying investors. In the case where the scheme or the investors suffered a loss, this loss shall be quantified;
- (e) the action taken to prevent the recurrence of the breach.

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1.18 The scheme, the AIFM or the administrator on behalf of the scheme shall submit copies of the scheme's annual audited financial statements.

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1.19 The scheme shall disclose the identity of the regulated entity and its regulator or regulators in all correspondence, advertisements and other documents. Wording

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similar to the following shall be used: "Licenced by the MFSA as an Alternative Investment Fund."

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1.20 The MFSA shall not be liable in damages for anything done or omitted to be done unless the act or omission is shown to have been done or omitted to be done in bad faith.

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

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1.22 The scheme shall not be required to make public the issue and redemption prices of its units or shares. However, these must be made available to unit-holders upon request.

1.23 If the dealings in the units or shares and/or the issue of NAV are suspended, the scheme, the AIFM or the administrator behalf of the scheme shall inform the MFSA forthwith stating the reason for this suspension.

1.24 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 AIFM 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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1.25 The scheme, the AIFM or the administrator on behalf of the scheme shall keep such accounting and other records as are necessary to enable it to comply with these conditions and to demonstrate that compliance has been achieved. Accounting records shall be retained for a minimum period of ten years. During the first two years, they shall be kept in a place from which they can be produced within two working days of their being requested. After the first two years, they shall be kept in a place from which they can be produced within five working days of their being requested.

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1.26 In the event of a winding up, the scheme must give the MFSA at least two weeks' notice of this intention. The prior approval of the MFSA shall be obtained for the

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approach to be adopted. If requested to do so by the MFSA, the scheme or the manager shall do all in its power to delay the winding-up or to proceed with the winding up in accordance with the conditions imposed by the MFSA.

1.27 Any changes to the financial year-end of the scheme shall be notified to the MFSA and disclosed in the prospectus.

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## 2. GOVERNING BODY OF THE SCHEME

2.01 The governing body<sup>3</sup> 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 MFS A shall be satisfied on a continuing basis of the fitness and properness of the members of the governing body.

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

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

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

2.07 The governing body must not merely carry out a vetting function with regards to all the documents which are submitted for its attention. It is the duty of the governing body of the scheme to inform itself of its investment activities and have a proper understanding of its financial condition.

2.08 The members of the governing body of the scheme shall exercise the powers they have for the purposes for which such powers were conferred and they shall not misuse such powers.

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

2.10 Whilst the governing body of the scheme may be entitled under the memorandum and articles of association to delegate particular functions, the delegation of such functions shall not absolve the governing body from the duty to supervise the discharge of such delegated functions.

2.11 The members of the governing body shall carry out all the necessary checks to satisfy themselves that the scheme's overall structure is consistent with the standards prescribed in the Act and in these Rules and that the terms agreed to in the contracts

<sup>3</sup> which includes the board of directors, trustee, or general partners where applicable

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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

3.01 The scheme may appoint service providers as it deems necessary. In particular, it is obliged to appoint an AIFM, a depository, an auditor, a compliance officer and a money laundering reporting officer.

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

3.03 The scheme together with the service providers appointed shall comply with the applicable laws whether Maltese or EU related to which they may respectively be subject.

### ➤ The AIFM

3.04 The scheme may appoint a single external AIFM with responsibility for portfolio management and risk management of the scheme and other permitted services. The AIFM shall be duly authorised in terms of the AIFMD.

3.05 The AIFM may either have an established place of business in Malta or be a European AIFM. Where the AIFM is established in Malta, it shall be in possession of a Category 2 Investment Services Licence issued in terms of article 6 of the Act and authorised by the MFSA as an AIFM in terms of the AIFMD.

3.06 Where the scheme does not appoint an external AIFM, it shall be subject to all the Rules prescribed in this Part to the Rules and to the Rules included in Appendix IX providing for Supplementary Rules applicable to Self-Managed AIFs.

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

3.08 The scheme may appoint a European AIFM in accordance with the Investment Services Act (Alternative Investment Fund Manager Passport) Regulations<sup>4</sup>. A European AIFM may seek to establish a branch in Malta or provide services pursuant to regulations 6 and 7 of the said regulations.

3.09 The appointment and/ or replacement of any party who is to be the AIFM, the terms of that appointment and the contents of the agreement to which the appointment is subject, shall be agreed with the MFSA. The MFSA shall have the right to require the replacement of the AIFM.

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3.10 The scheme shall be subject to investment objectives, policies and restrictions outlined in its prospectus. The AIFM (where appointed) or the scheme are required to comply with the provisions of the prospectus and other instruments of incorporation, including the investment policies and restrictions of the scheme.

## Fund administrator

3.11 The scheme (including a self-managed Scheme) or the AIFM may appoint an administrator. Where an administrator is not appointed, the AIFM shall be responsible for the administration function as long as the AIFM is authorised to undertake fund administration activities.

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

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

## Depository

3.14 The depository appointed by the scheme or by the AIFM on behalf of the scheme, shall ensure compliance with the applicable provisions of the Investment Services Act (Custodians of Collective Investment Schemes) Regulations.

3.15 The depository shall be the holder of a Category 4a Investment Services Licence issued by the MFSA.

## Prime broker and counterparties

3.16 The scheme may appoint one or more prime brokers or counterparties.

3.17 Upon selecting and appointing counterparties and prime brokers, the AIFM on behalf of the scheme, shall enter into a written contract outlining the applicable terms. The contract shall also provide that the depository be informed thereof. In particular any possibility of transfer and reuse of the scheme's assets shall be provided for in the contract and shall comply with the scheme's articles of association and prospectus.

3.18 The scheme or the AIFM on behalf of the scheme shall exercise due skill, care and diligence before entering into an agreement and on an on-going basis thereafter taking into account the full range and quality of their services.

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<#>AIFs which have no redemption rights exercisable during the period of 5 years from the date of the initial investments and which in accordance with their core investment policy, generally do not invest in assets that must be held in custody in accordance with their core investment policy, or generally invest in issuers or non-listed companies in order to potentially acquire control over such companies, may appoint an entity which carries out depository functions as part of its professional or business activities in respect of which such entity is subject to mandatory professional registration or to legal or regulatory rules of professional conduct and which can provide sufficient financial and professional guarantees to meet the commitments inherent in carrying out its depository functions.¶

¶

<#>The appointment of the Custodian shall be evidenced by a written contract. This contract shall *inter alia* regulate the flow of information deemed necessary to allow the Custodian to perform its functions for the AIF for which it has been appointed as Custodian.¶

¶

<#>The Custodian shall be separate and independent from the AIFM and shall act independently and solely in the interests of the Unit or Shareholders. 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 AIF becomes aware of such a matter.¶

¶

<#>The Custodian appointed for an AIF shall not be appointed as an External Valuer of that AIF, unless it has functionally and hierarchically separated the performance of its custodial functions from its tasks as External Valuer and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF.¶

¶

<#>The written consent of the MFSA shall be obtained before the appointment or replacement of any party to act in the capacity of Custodian to the AIF. The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information it considers appropriate.¶

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3.19 When selecting prime brokers or counterparties of an AIFM or a scheme in an OTC derivatives transaction, in a securities lending or in a repurchase agreement, the AIFM on behalf of the scheme shall ensure that those prime brokers and counterparties fulfil all of the following conditions:

- a) they are subject to on-going supervision by a public authority;
- b) they are financially sound;
- c) they have the necessary organisational structure and resources for performing the services which are to be provided by them to the scheme or AIFM.

3.20 When appraising the financial soundness referred to in Rule 3.19(b), the AIFM on behalf of the scheme shall take into account whether or not the prime broker or counterparty is subject to prudential supervision, including sufficient capital requirements and effective supervision.

3.21 The list of selected prime brokers shall be approved by the AIFM's senior management. In exceptional cases, prime brokers not included in the list may be appointed, provided they fulfil the requirements prescribed in Rule 3.19 and subject to approval by the AIFM. The AIFM shall be able to demonstrate the reasons for such choice and the due diligence that it exercised in selecting and monitoring the prime brokers which had not been listed.

### ➤ **Compliance officer**

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

3.23 In order to enable the compliance functions to be properly carried out, the scheme shall establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the scheme to comply with its obligations under the Act, the regulations issued thereunder and these Rules, as well as with its obligations under other applicable legislation, in particular the Prevention of Money Laundering Act, the Prevention of Financial Markets Abuse Act, and the regulations issued thereunder, as well as to detect the associated risks, and shall put in place adequate measures and procedures designed to minimize such risk and to enable the MFSA to exercise its powers effectively.

3.24 In order to enable the compliance function to discharge its responsibilities properly, the scheme shall ensure that a compliance officer is appointed to assume responsibility for the compliance function and for any reporting as to compliance required by these Rules.

3.25 The scheme shall request its compliance officer to prepare a compliance report at least on a six monthly basis, which report shall be submitted to the governing body of the scheme.

3.26 The compliance report should indicate any:  
a) breaches to the investment and borrowing restrictions;

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- b) breaches to the Rules included in this Part of the Rulebook;
- c) complaints from unit or shareholders in the scheme and the manner in which these have been handled in accordance with Appendix X to these Rules on complaints handling;
- d) material valuation errors (higher than 0.5% of NAV) and the manner in which these have been handled; and
- e) material compliance issues during the period covered by the compliance report.

3.27 The compliance report should also include a confirmation that all the local prevention of money laundering requirements have been satisfied. This confirmation should be obtained from the scheme's money laundering reporting officer.

3.28 A copy of the compliance report should be held in Malta at the scheme's registered office and made available to the MFSA during compliance visits.

➤ ***Money laundering reporting officer***

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

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

➤ ***Auditor***

3.31 The scheme shall appoint an auditor approved by the MFSA. The auditor shall be a person empowered to audit accounts in terms of Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts.

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

3.33 The scheme shall make available to its auditor the necessary information and explanations to discharge his/her responsibilities as an auditor and in order to meet the MFSA's requirements.

3.34 The scheme shall not appoint an individual as an auditor, nor appoint an audit firm where the individual directly responsible for the audit, or his/her firm is:

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

# MFSA

## MALTA FINANCIAL SERVICES AUTHORITY

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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.

3.35 The scheme shall obtain from its auditor a signed letter of engagement defining clearly the extent of the auditor's responsibilities and the terms of his appointment. The scheme shall confirm in writing to its auditor its agreement to the terms in the letter of engagement.

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

- a) to provide such information or verification to the MFSA as the MFSA may request;
- b) to vacate his/her office if he becomes disqualified to act as auditor for any reason;
- c) if he/ she resigns, or is removed or not reappointed, to advise the MFSA of that fact and of the reasons for his ceasing to hold office. The auditor shall also be required to advise the MFSA if there are matters he/ she considers should be brought to the attention of the MFSA;
- d) in accordance with article 18 of the Act, to report immediately to the MFSA any fact or decision of which he becomes aware in his capacity as auditor of the scheme which:
  - i. is likely to lead to a serious qualification or refusal of his/ her audit report on the accounts of the scheme; or
  - ii. 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
  - iii. gravely impairs the ability of the scheme to continue as a going concern; or
  - iv. relates to any other matter which has been prescribed.

3.37 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.

3.38 In respect of each annual accounting period, the scheme shall require its auditor to prepare its management letter in accordance with International Standards on Auditing. This management letter shall be sent to the MFSA.

### ➤ **External valuer**

3.39 The valuation function shall be performed by:

- a) an external valuer, being a legal or natural person independent from the scheme, the AIFM and any other persons with close links to the scheme or the AIFM; or
- b) the AIFM, provided that the valuation task is functionally independent from the portfolio management and the remuneration policy and other measures ensure that conflicts of interest are mitigated and that undue influence upon employees is prevented.

## MFSA

MALTA FINANCIAL SERVICES AUTHORITY

- 3.40 The external valuer shall be appointed by the AIFM or by the scheme where this is self-managed.

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#### **4. INVESTMENT OBJECTIVES, POLICIES AND RESTRICTIONS**

##### **➤ General**

- 4.01 The scheme shall be subject to the investment objectives, policies and restrictions outlined in its prospectus. The AIFM or the scheme, where this is self-managed, shall take all reasonable steps to comply with its investment policies and restrictions. The depositary shall supervise the operations of the scheme to ensure that the AIFM complies with the investment policies and restrictions of the scheme.
- 4.02 Changes to the investment policies and restrictions of the scheme shall be notified to the investors in advance of the change.

##### **➤ Distributions of Income**

- 4.03 The scheme shall effect any distributions of income in accordance with the provisions of its instruments of incorporation and/or prospectus. It shall further comply with the provisions of Appendix IV on distributions of income. In the case of conflict between the provisions of Appendix IV and the provisions of the instruments of incorporation and/or prospectus, the former shall prevail.

##### **➤ Side Letters**

- 4.04 Side letters to be entered into by the scheme must be circulated to and approved by the governing body of the scheme prior to issue.
- 4.05 The fact that side letters detailing preferential treatment of certain investors may be issued shall be disclosed in the instruments of incorporation and/or prospectus.
- 4.06 Side letters issued by the scheme should be retained in Malta at its the registered office and should be available for inspection by the MFSA during compliance visits.

##### **➤ Side Pockets**

- 4.07 Side pockets to be entered into by the scheme must conform to the Guidance Note on the use of side pockets by collective investment schemes issued by the MFSA.
- 4.08 The fact that side pockets may be used shall be disclosed in the instruments of incorporation and/or prospectus.

##### **➤ Rules applicable to schemes engaged in foreign currency lending**

- 4.09 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).



# MFSA

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4.10 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.

4.11 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.

➤ ***Breach of investment restrictions***

4.12 The scheme shall comply with the investment restrictions within six months from the launch thereof or upon reaching a value equivalent to EUR 2,500,000 whichever is sooner.

Provided the scheme considers this to be in the best interest of its shareholders and that it observes the principle of risk spreading, it will not be required to comply with its investment restrictions upon reaching a value equivalent to EUR 2,500,000 subject to it complying with such restrictions within a maximum of six months from launch;

Provided further that the MFSA shall be advised if the scheme does not reach a value equivalent to EUR 2,500,00 within six months from the launch thereof or if the value of the scheme falls below EUR 2,500,000.

Commented [IA7]: Inserted to align with Rule 10.17 of Part BII

4.13 The following shall be the rules applicable in the event of an 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 AIFM or the scheme, the AIFM 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).

Paragraph (i) 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.

Paragraph (i) is without prejudice to the duty of the AIFM and the scheme to comply with the scheme's investment restrictions and to ensure that such restrictions are not contravened as a direct result of any acquisition of its underlying assets.

# MFSA

MALTA FINANCIAL SERVICES AUTHORITY

ii. As soon as the depositary becomes aware that circumstances described above have arisen, the depositary shall take such steps as are necessary to ensure that the scheme or the AIFM comply with the requirement imposed in 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 Rule and will therefore not be subject to the MFSA's notification requirements. However, where the contravention is not remedied by the AIFM or the scheme within the maximum six month period stipulated in paragraph (i) above, a breach of this Rule is deemed to arise and the relevant notification requirements will apply.

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4.14 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*

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

## ➤ *Investments in securities*

4.16 The scheme shall not invest more than 10 per cent of its assets in securities which are not traded in or dealt on a market which:

- (a) is listed in the prospectus;
- (b) is regulated, operates regularly, is recognised and is open to the public;
- (c) has adequate liquidity and adequate arrangements in respect of the transmission of income and capital; and
- (d) is not the subject of an MFSA restriction.

4.17 The scheme shall not invest more than 10 per cent of its assets in securities issued by the same body.

4.18 The scheme shall not hold more than 10 per cent of any class of security issued by any single issuer.

4.19 The scheme may, subject to approval from the MFSA, invest up to 100 per cent of its assets in securities issued or guaranteed by any State, its constituent States, its local authorities, or public international bodies of which one or more States are members.

4.20 The scheme may invest in nil paid or partly paid shares and subscribe for placing or underwriting as long as the amount due to be paid does not exceed 5 per cent of the value of the scheme, except that, if the amount exceeds that figure, cash not required for other purposes or for the efficient management of the portfolio shall be available to cover the full amount outstanding.

4.21 The scheme and its AIFM, taking into account all of the schemes which the latter manages, shall not acquire sufficient instruments to give it the right to exercise control over 20 per cent or more of the share capital or votes of a company, or sufficient instruments to enable it to exercise significant influence over the management of the issuer.

➤ ***Deposits with credit institutions***

4.22 No more than 10 per cent of the scheme's assets shall be kept on deposit with any one body. This limit may be increased to 30 per cent in respect of money deposited with a credit institution licensed in Malta or in any other Member State or EEA State, or with any other credit institution which has been approved by the MFSA.

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

4.23 The scheme may acquire the units of other collective investment schemes subject to the following:

- i. not more than 20 per cent of the scheme's assets shall be invested in any one scheme;
- ii. where the scheme invests in the units of another scheme managed by the same AIFM, the AIFM of the scheme into which the investment is made shall waive all charges which it is entitled to charge for its own account in relation to the acquisition or disposal of units;
- iii. where a commission is received by the AIFM of the scheme by virtue of an investment in the units of another scheme, that commission shall be paid into the property of the scheme.

➤ ***Transactions in financial derivative instruments – for efficient portfolio management purposes***

4.24 The scheme may employ techniques and instruments for the purpose of efficient portfolio management. These operations may concern the use of financial derivative instruments.

The reference in this Rule to techniques and instruments 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.

4.25 The scheme shall only hold financial derivative instruments for the purposes of efficient portfolio management in terms of Rule 4.24 and shall not hold financial

derivative instruments for investment purposes nor shall it be leveraged or geared in any manner through the use of financial derivative instruments.

- 4.26 In order to assure it is not leveraged or geared through the use of financial derivative instruments, the scheme shall calculate its exposure relating to financial derivative instruments on the basis of the Commitment Approach. The Scheme shall convert its derivatives positions into the equivalent positions of the underlying assets embedded in those financial derivative instruments. The commitment calculation for certain financial derivative instruments may be adjusted by a probability factor that aims to reflect the probability of the financial derivative instrument's commitment occurring.

For options and warrants, the Delta Approach may be used. Where it is not possible to calculate a probability factor on a scientific and objective basis, the factor is assumed to be 1. Reference should be made to Appendix VI to these Rules which sets out the Commitment Rules for a non-exhaustive list of commonly traded financial derivative instruments.

- 4.27 The scheme's maximum exposure to one counterparty in an OTC-derivative transaction shall not be more than 5 per cent of value of its assets. This limit may be increased to 10 per cent in respect of OTC-derivative transactions made with a counterparty which is a credit institution. 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.
- 4.28 The exposure to one counterparty in an OTC-derivative transaction may be reduced where the counterparty provides the scheme with collateral which satisfies the following criteria:
- i. the collateral falls within one of the following categories:
    - a. cash;
    - b. government or other public securities;
    - c. certificates of deposit issued by relevant institutions; and
    - d. bonds/commercial paper issued by relevant institutions;
  - ii. collateral is:
    - a. marked to market daily;
    - b. transferred to the depository, or its agent; and
    - c. immediately available to the scheme, without recourse to the counterparty, in the event of a default by that entity;
  - iii. in the case of non-cash collateral, the collateral:
    - a. cannot be sold or pledged;
    - b. has a minimum credit rating of A or equivalent;
    - c. is held at the credit risk of the counterparty; and
    - d. is issued by an entity independent of the counterparty;

- iv. in the case of cash collateral, the collateral may not be invested other than in the following:
  - a. deposits with relevant institutions, which are capable of being withdrawn within 5 working days;
  - b. government or other public securities which have a minimum credit rating of A or equivalent;
  - c. certificates of deposit issued by relevant institutions, which have a minimum credit rating of A or equivalent; and
  - d. daily dealing qualifying money market funds which have a minimum credit rating of AAA or equivalent.

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 1060/2009<sup>5</sup>, for assessing the creditworthiness of the collateral, government or other public securities, certificates of deposit and qualifying money market funds.

4.29 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.

4.30 The scheme may net the mark-to-market value of its OTC-derivative positions with the same counterparty, thus reducing the its exposure to its counterparty:

Provided that the scheme 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, the scheme 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.

4.31 Derivative transactions which are performed on an exchange where the clearing house 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.

<sup>5</sup> Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies

# MFSA

MALTA FINANCIAL SERVICES AUTHORITY

- 4.32 The scheme shall only enter into OTC-derivatives for the purposes of efficient portfolio management with counterparties who:
- are not the AIFM or depositary of the scheme; and
  - 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; and
  - have a credit rating of at least A (Standards & Poor's) or A2 (Moody's) or an equivalent rating by another internationally renowned credit rating agency.

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 1060/2009, for assessing the creditworthiness of the counterparties.

- 4.33 Such counterparty as referred to in Rule 4.32 shall satisfy the AIFM 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 AIFM or the scheme at fair value.
- 4.34 When the scheme holds a financial derivative instrument which automatically or at the scheme's or counterparty's discretion, requires cash or physical settlement on maturity or exercise, the scheme shall hold the underlying instrument as cover. The level of cover should be calculated on the basis of the Commitment Approach as indicated in Rule 4.26.
- 4.35 When in view of the nature of the financial derivative instrument, the scheme cannot hold the underlying as cover<sup>7</sup>, Rule 4.34 shall not apply and the scheme shall hold any of the following assets as cover:
- cash;
  - liquid debt instruments (e.g. government bonds of first credit rating) prudently adjusted by appropriate haircuts (minimum of 5 per cent);
  - 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 on the basis of the Commitment Approach as indicated in Rule 4.26.

For the purposes of the above, 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

<sup>6</sup> Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies

<sup>7</sup> (e.g. in the case of index based financial derivative instruments)

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.

➤ ***Uncovered sales***

- 4.36 The scheme may not carry out uncovered sales of securities or other financial instruments. 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***

- 4.37 Notwithstanding the individual limits laid down in Rules 4.17, 4.22 and 4.27, the scheme may not combine:
- (i) investments in securities issued by;
  - (ii) deposits made with; and/or
  - (iii) counterparty exposures arising from OTC-derivative transactions undertaken with;
- a single body in excess of 35 per cent of its assets.

➤ ***Borrowing limits***

- 4.38 A scheme may borrow up to a maximum of 10 per cent of:
- i. its assets, when the scheme is set up as an investment company or limited partnership; or
  - ii. the value of the scheme, when the scheme is set up as a unit trust or common contractual fund.

Provided that the borrowing is on a temporary basis and such that the scheme's overall risk exposure does not exceed 110 per cent of its assets under any circumstances.

Provided further that the scheme may acquire foreign currency by means of a 'back to back' loan. Foreign currency obtained in this manner is not classed as borrowings for the purposes of this Rule provided that the offsetting deposit:

- a. is denominated in the base currency of the scheme; and
- b. equals or exceeds the value of the foreign currency loan outstanding.

➤ ***Miscellaneous***

- 4.39 A scheme cannot enter into cross sub-fund investments.
- 4.40 Material changes to the investment policies and restrictions of the scheme shall be notified to investors in advance of the change.

# MFSA

MALTA FINANCIAL SERVICES AUTHORITY

**4.41** Changes to the investment objectives of the scheme shall be subject to the prior approval of its unit-holders. The change in the investment objectives should only become effective after all pending redemptions linked to the change in the investment objectives have been satisfied. Any applicable redemption fees would also need to be waived accordingly.

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## **Additional Rules applicable to acquisitions in specie**

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**4.42** 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.

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

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- (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.

**4.44** The report drawn up in accordance with Rule 4.22 shall include:

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

**4.45** 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.

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**4.46** 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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## **Additional rules applicable to financing of SPVs**

**4.47** 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:

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- (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;



# MFSA

MALTA FINANCIAL SERVICES AUTHORITY

- (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.

4.48 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

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

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

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

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

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

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

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## 5. TRANSPARENCY REQUIREMENTS

### ➤ Instruments of incorporation

5.01 Any changes to the scheme's instruments of incorporation shall be approved by the MFSA in advance of implementation.

5.02 The instruments of incorporation shall at least contain the information prescribed in Appendix III to these Rules.

### ➤ Prospectus

5.03 The scheme shall publish a prospectus, which shall be dated and which shall be kept up to date. The prospectus shall be offered to investors free of charge before they become committed to investing.

5.04 The prospectus shall contain sufficient information for investors to make an informed judgement about the investment proposed to them and shall contain at least the information prescribed in Appendix I to these Rules.

5.05 The scheme shall approve the prospectus including any amendments thereto, and confirm its approval to the MFSA.

5.06 The prospectus and any amendments thereto shall be sent to and agreed with the MFSA before publication. The AIFM must submit a copy of its approval of the prospectus, when this is submitted for the MFSA's approval.

### ➤ Annual report

5.07 The scheme, the AIFM or the administrator on behalf of the scheme shall submit copies of the scheme's annual audited financial statements to the MFSA and such other information, as the MFSA may from time to time request. The annual reports shall be published and provided to investors in the scheme upon request. The annual reports shall be submitted to the MFSA within six months respectively of the end of the period concerned.

Where applicable, the scheme, the AIFM or the administrator on behalf of the scheme shall also include with the annual report a confirmation in terms of Rule 4.11 of these Rules on the involvement of the scheme in foreign currency lending.

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

5.09 In the case where the submission of the financial statements to the MFSA will be justifiably and exceptionally delayed, the scheme or the AIFM on behalf of the scheme shall at least one week prior to the deadline for the submission of the financial

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statements, submit a request with the MFSA to consider the possibility of such a delay. This request shall be accompanied by the following documents:

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

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

- 5.10 The annual report shall be accompanied by a report by the depository on whether the scheme has been managed:
- a. in accordance with the limitations imposed on the investment and borrowing powers of the scheme by the instruments of incorporation and by the MFSA; and
  - b. in accordance with its instruments of incorporation and its licence conditions.

In the case of non-compliance with paragraphs (a) or (b) above, the depository's report should outline the steps taken to rectify the situation.

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

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

- 5.13 The scheme 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.

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

- 5.15 In complying with the requirements prescribed in this section above, the scheme shall also refer and comply with the applicable provisions of the Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and

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supervision outlining the content and format of the annual report. The content and format of the annual report shall be adapted to the type of AIF to which it applies.

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DEALINGS BY OFFICIALS OF AN AIF¶

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

¶ The AIF must take appropriate steps to ensure that officials act in conformity with the statutory requirements concerning insider dealing and market abuse¶

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

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

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¶ <#>MARKETING OF AN AIF¶

¶ <#>The marketing of the AIF is subject to the provisions of Section 11 of the Act.¶

¶ <#>The AIF may only be marketed with a passport in jurisdictions outside Malta if it satisfies the relevant provisions prescribed in the Investment Services Act (Alternative Investment Fund Manager Passport) Regulations and the Investment Services Act (Marketing of AIFs) Regulations. The marketing of an AIF in jurisdictions outside Malta to investors other than Professional Investors as defined in this Rulebook is not automatic and may be allowed subject to national provisions applicable in the respective jurisdiction as prescribed in Article 43 of the AIFM Directive.¶

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¶ SUPPLEMENTARY LICENCE CONDITIONS APPLICABLE TO SELF-MANAGED AIFs¶

¶ For the purposes of this section, the term 'the AIF' shall be understood as referring to a 'Self-Managed AIF'.¶

¶ Permissible Activities¶

¶ A self-managed AIF may only be authorised to provide the licensable activities which consist in the internal management of the AIF as provided hereunder:¶

¶ Investment management functions which the AIF shall at least perform:¶

¶ Portfolio management;¶  
¶ Risk management.¶

¶ Other functions that an AIF may additionally perform in the course of the collective management thereof:¶

¶ Administration¶  
¶ legal and fund management accounting services;¶  
¶ customer inquiries;¶